



HPU Libraries Copyright Policy

The purpose of this policy is to provide the HPU community with a summary of U.S. copyright law as it relates to the use of copyright-protected works in the classrooms and libraries at HPU, and to provide guidelines and procedures for obtaining copyright permission to use these works. This policy covers issues such as photocopying, online and distance education, coursepacks, print and electronic reserves, interlibrary loan (ILL), and document delivery. This policy is not a substitute for legal advice, and proper legal advice should be obtained when necessary.

What is Copyright?

Copyright law provides creators and distributors of creative works the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). As determined by the law:

1. If you are not a copyright holder for a particular work, you must obtain copyright permission prior to reusing or reproducing that work.
2. There are some specific exceptions in the Copyright Act for certain academic uses.
3. Permission is never required for certain actions, such as reading or borrowing original literary works or photographs from a library collection.

What is Protected by Copyright?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform, and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data, or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. Works created by companies or other types of organizations generally have a copyright term of 95 years.

Fair Use

The fair use provision enables certain uses of copyrighted works without obtaining permission from the copyright holders. Found in the Copyright Act at Section 107, a reproduction of someone else's copyright-protected work is likely to be considered fair if used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship, and research. Fair use determinations are made based upon four factors:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyright-protected work. A use of a factual or scholarly work is more likely to be considered fair than is a use of a work that is predominantly expressive (such as a work of fiction or a dramatic film);

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. The smaller the portion used, the more likely the use is to be considered fair;
4. The effect of the use upon the potential market for, or value of, the copyrighted work. A use is more likely to be fair if it does not have a substantial negative impact on the market for the work.

In keeping with the factors listed above, the University Libraries interpret the following such situations as fair use:

1. Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
2. Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning's paper is directly relevant to that day's class topic. This would generally cover one time use in only one semester.
3. Use in a parody of short portions of the work itself.
4. A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

Types of Use

1. **Classroom Handouts.** Based on the University Libraries' fair use analysis, classroom handouts fall into two categories: ones that require permission and ones that do not.
 - a. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may use that work without obtaining permission.
 - b. If the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, you must obtain copyright permission to use the work.
2. **Sound Recordings, Illustrations, and Photographs.** Up to 10% of a copyrighted musical composition may generally be reproduced, performed, or displayed as part of a multimedia program produced by an educator or student for educational purposes. As a general rule:
 - a. A single photograph or illustration may be used in its entirety, but no more than five images by any one artist or photographer may be incorporated into any one multimedia program.
 - b. No more than 10% of the photographs or illustrations in any one collection may generally be used in a multimedia program.
3. **Coursepacks.** All articles, chapters, and other individual works in any print or electronic coursepack require copyright permission.
 - a. Copyright permission for coursepacks is usually granted by the academic period. To reuse a coursepack in subsequent academic periods (e.g.: semester, quarter, trimester, etc.), one will probably need to obtain permission again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.
 - b. When ordering coursepacks it is important to clarify who will obtain permission for the coursepack – the copy shop or reprographic center, the faculty member, or a member of the administrative staff.
 - c. Deferring responsibility for copyright permission will not provide you protection against a claim of copyright infringement.
4. **Reserves.** The Libraries offer reserve services to assist course instructors in providing copies of required or recommended readings for students enrolled in their classes. Instructors wishing to

place material on reserve must fill out and submit a reserve form. Please allow two to three days to process the request.

- a. Books from the Libraries' circulating collections will be placed on the Reserve shelves at either library at the request of an instructor.
 - b. If the Libraries do not own the requested book, the instructor may request that the book be ordered, or may place his or her own personal copy on reserve.
 - c. Instructors may have photocopies or other reproductions of required and recommended course materials placed on reserve in the Libraries. These reproductions must meet the following guidelines:
 - Reproduced materials must be the property of the instructor placing the item on reserve.
 - Reproductions must have been made in compliance with copyright law. Reproductions of copyrighted material must have been made either with the permission of the copyright owner or after determination by the instructor that the reproduction constituted fair use.
 - Full bibliographic citation must be clearly written or typed on the first page of the reproduced material.
 - The instructor must sign the reserve form's copyright compliance statement before the Library will place material on reserve.
 - d. The following materials are unable to be accepted for reserve:
 - Coursepacks, or other collections of photocopied materials compiled to create or replace an anthology or course pack.
 - Copies of, or from, consumable works, such as workbooks, test booklets, answer sheets and the like.
 - Items marked as instructor's copies, desk copies, reference copies, or otherwise designated as having been published for a specific, limited audience or market.
5. **Interlibrary Loan (ILL).** The University Libraries may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work.
- a. The University Libraries will borrow photocopies of articles for students, faculty, and staff for research purposes within the guidelines of Section 108 of the Copyright Act and fair use.
 - b. The Libraries follow the guidelines for fair use that were formulated by the National Commission on New Technological Uses of Copyright Works (commonly referred to as the CONTU guidelines). The CONTU guidelines specify that a library may borrow copies of up to five articles from the most recent five years of a periodical during each calendar year. For requests after the first five, copyright clearance charges must be paid.
 - c. If the articles or items being copied have been obtained through a digital license, you must check the license to see under what terms and conditions, if any, interlibrary loan is permitted.
6. **Document Delivery Services (DDS).** It is important to maintain a distinction between ILL and Document Delivery Services. Photocopying for DDS requires copyright permission.
7. **Media Resources.** The Libraries' Media Resources collection follows the classroom exemption provision of the Copyright Act (Section 110) and the Conference on Fair Use (CONFU): Fair Use Guidelines for Educational Multimedia.

- a. Under these guidelines, most classroom uses of audiovisual media are permissible, provided that the showing is by instructors, guest lecturers, or students and is done in connection with face-to-face teaching activities.
- b. Most items from the Libraries' Media Resources collection do not have public performance rights.
- c. The Libraries cannot accept copies of video or audio material for placement on reserve.

Photocopying in the Libraries

It is permissible to photocopy copyright-protected works in the University Libraries without obtaining permission from the copyright owner, under the following circumstances:

1. **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the University Libraries may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must then become the property of the library user, and the Libraries must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research. As recommended by Section 108 of the Copyright Act, the Libraries must display the register's notice at the place library users make their reproduction requests to the Libraries.
2. **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation, security, or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the University Libraries must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
3. **Replacement of lost, damaged, or obsolete copies.** The University Libraries may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating, or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)
4. **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by the Libraries at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the Libraries determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The Libraries must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship, and research; and the Libraries must display the register's notice at the place library users make their reproduction requests to the Libraries.

Photocopying for Students, Faculty, and Staff

The University Libraries may make reproductions for library users (students, faculty, etc.), provided the following criteria are met:

1. The Libraries make one reproduction of an article from a periodical or a small part of any other work.
2. The reproduction becomes the property of the library user.
3. The Libraries have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research.
4. The Libraries display the register's notice at the place library users make their reproduction requests to the Libraries.

Photocopying by Students, Faculty, and Staff

Photocopying done by students, faculty, and staff is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks all require permission.

Teaching and Learning in the Classroom

1. Section 110(1) of the Copyright Act allows teachers and students to display or perform copyrighted works in face-to-face classroom situations. For instructors, this would include the display of art images, the playing of a motion picture or audiotape, or the performance of a musical or theatrical piece. The same items could be included in student presentations in a classroom setting. Motion pictures or other audiovisual works (or images from them) may not be displayed, however, if the copies were not lawfully made and the instructor or student displaying the work knew or had reason to believe that they were not lawfully made.
2. Section 110(1) of the Copyright Act applies only to the display or performance of copyrighted works in the face-to-face classroom setting, not to the making of multiple copies of material for classroom use. An instructor may make copies or excerpts of certain copyrighted materials - for example, an article, poem, or cartoon - without obtaining permission if there is not enough time to seek permission. Limited copying for classroom distribution may be permitted as fair use.

Distance Learning and the TEACH Act

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 updated Section 110(2) of the Copyright Act to extend some of the face-to-face teaching copyright exemptions to distance learning situations. Under the TEACH Act, nondramatic literary and musical works (e.g., an essay, a song) and "reasonable and limited portions" of other works may be displayed or performed in class sessions that are transmitted online, subject to a number of specified conditions.

The University Libraries recommend the following guidelines for distance learning:

1. The course material should be accessible only to students in the course, for the duration of the course, through a secure, password protected course Web site or through a password protected course management system (such as Blackboard).
2. The instructor should post a notice to students that copyrighted work is being made available through the course and that students may not distribute or use the material outside of the course. An example of such a notice follows:

United States law governs the use of copyrighted materials. These laws prohibit reproduction of the material for purposes other than the intended instructional purposes of this course. Other uses, including commercial use and any further electronic distribution of the material, may constitute copyright infringement.
3. Reasonable controls should be employed to prevent downloading and distributing the material by students. This can be done by using technology (such as streaming video) that allows for viewing but not downloading and distributing.
4. The material should be used only for instructional purposes as an integral part of the course session.
5. The copy of the materials used must be lawfully made and lawfully acquired.
6. There is no exemption under the TEACH Act for the use of works that were specifically produced for the purpose of educational use. Examples of such materials are electronic course packs and electronic textbooks provided by publishing companies. These types of materials may be used only in accord with the contracts or licenses entered into between the intellectual property holder and the user.

7. Materials may not be digitized if they are already available in a digital format. The use of newly digitized materials must be protected technologically.
8. As noted above, in the case of nondramatic literary or musical works (e.g. a poem or a song), the entire work may be transmitted in an online class session. Visual images that may be presented in a face-to-face class (e.g. a photograph or a painting) may also be transmitted online. But only "reasonable and limited portions" of other works, such as a motion picture, may be presented online.

As noted above, the TEACH Act applies only to class sessions, not to other aspects of distance learning courses (such as the distribution of background material to students). The fair use provisions apply to all aspects of distance learning, and in some instances fair use may permit more extensive use of copyrighted materials than that specifically permitted by the TEACH Act.

Copyright and Foreign Works

The U.S. is a member of the leading international copyright treaty, the Berne Convention. As such, when the University Libraries use a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.). The Copyright Clearance Center (<http://www.copyright.com/>) has many reciprocal licenses to allow use of materials from other countries.

How to Obtain Copyright Permission

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is best to obtain permission in writing (including e-mail) and to ensure that the HPU Office of University Counsel has a copy of each permission form or letter.

The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that you wish to use the materials. If you need a quicker permission, let the copyright owner know this and he/she may be able to get back to you more quickly. Often, the Copyright Clearance Center is your quickest one-stop resource for obtaining copyright permission.

Fact Finding Questions

Once you have identified the materials you want to use and determined that copyright permission is required, you must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work.

1. The Copyright Office of the Library of Congress (www.loc.gov) may be of assistance in locating a copyright owner if the work is registered. Please note, however, that copyright is automatically granted to all works upon their being written down and that registration with the Copyright Office is not required.
2. There are two primary options for obtaining permission to use the work. You may contact the copyright holder directly or you may contact the Copyright Clearance Center.
3. Check with the HPU Policy and Governance Manager - Office of University Counsel, to determine if your institution already has an established process for obtaining copyright permission through the Copyright Clearance Center. If your department or campus does not have a centralized location or process for obtaining copyright permission, you may create an account with the Copyright Clearance Center.

Information in your Permission Request

The copyright holder or its agent will require the following information:

1. Title of the material
2. Creator/author of the material
3. Publisher of the material
4. Description of material
5. ISBN or ISSN, if applicable

6. Date of publication, if applicable
7. Purpose for which you wish to reproduce the item (research, commercial, educational, etc.)
8. How the material is to be reproduced (e.g., photocopied, digitized)
9. Where the reproduced material will be used or will appear and for how long

Frequently Asked Questions

1. How long does copyright protection last?

In the United States, the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death.

Works created by companies or organizations generally have a copyright term of 95 years.

When work is done by employees during the course of employment, those works may belong to the employer. These works are known as "works made for hire." Title 17, Section 101 states that:

A "work made for hire" is:

- *A work prepared by an employee within the scope of his or her employment; or*
- *A work specially ordered or commissioned for use as a contribution to a collected work.*

To determine what works are considered "works for hire" here at HPU, please consult Quinn Yang, Policy and Governance Manager – Office of University Counsel, at 544-0296 or qyang@hpu.edu.

2. What is "public domain?"

The public domain comprises all works that are either no longer protected by copyright or never were. It should not be confused with a work being "publicly available." All works first published in the United States before 1923 are considered to be in the public domain. It also extends to works published between 1923 and 1963 on which copyright registrations were not renewed. All materials created since 1989 are presumed protected by copyright. Also, remember that even if copyright does not apply, trademark or patent laws might. Works created by the United States federal government are in the public domain and can be used freely.

3. How much of a copyrighted work can be reproduced before becoming an infringement (for photocopying, reserves, etc.)?

A generally accepted best practice for reproduction is no more than 10% of a book, video recording, or audio recording, and one article from one issue of one journal title (per course in the case of reserves). The University Libraries follow this rule for reserves and other similar services.