

Portland State University Copyright Policy

As an institution that values intellectual inquiry in its undergraduate and graduate programs, provides leadership in the development of knowledge, and creates opportunities for the application of knowledge to real-world problems; Portland State University is committed to adhering to all applicable laws regarding intellectual property. This policy establishes Portland State University's compliance standards with Title 17 U.S. Code, the United States Copyright Act, the Digital Millennium Copyright Act of 1998, and the Technology, Education, and Copyright Harmonization (TEACH) Act 2002.

Purpose

The purpose of the Portland State University Copyright Guide is to provide a summary of United States copyright laws as they relate to the use of copyright protected works and to provide guidelines on the processes and procedures for lawful practice and use of copyrighted materials to facilitate the work of students, faculty, and employees. When permission to use copyright material is required, that permission must be obtained prior to use of the copyrighted materials. Every student, faculty member and employee of the University is expected to comply with this Guide.

Copyright Law

Copyright law provides creators and distributors of creative works with an incentive to share their works by granting to them the right to be compensated when others use their 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). Generally, if you are not a copyright holder for a particular work, as determined by the law, you must obtain copyright permission prior to reusing or reproducing that work. There are specific exceptions in the Copyright Act for certain academic uses. Permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection. 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. Nearly all creative works, 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books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound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—are protected by copyright. Under current copyright law, the author does not have to include the copyright notice © in order to have a copyright. Under the current law, the moment a work is written down, recorded or otherwise becomes “tangible,” it is protected by copyright law. The absence of a copyright notice on a creative work does not mean that the work is not subject to copyright protection. Copyright law provides copyright holders with control over the use of their creations and the ability to benefit, monetarily and otherwise, from the use of their works. The owner of a copyright has exclusive rights to do and to authorize third parties to do any of the following:

1. reproduce the copyrighted work in copies or phonorecords;
2. prepare derivative works based upon the copyrighted work;
3. distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, perform the copyrighted work publicly; and
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, display the copyrighted work publicly.

Copyrights are not always owned by the author or creator of the work. For example, authors often agree to assign their copyright to the publisher of their work. Even the author of a work will have to obtain permissions from the copyright holder if they do not retain some rights to reproduce, distribute, perform, display or prepare derivative works as a part of their agreement with the publisher.

Copyright law protects the expression of an idea; it 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. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years. For more information on copyright duration, visit <http://www.copyright.gov/circs/circ1.html#hlc>

Author/Creator Rights

As authors and creators of intellectual property, you have rights and some choices in how to manage the dissemination of your work. As contributors to the body of scholarly knowledge, Portland State staff, students, and faculty who author or create scholarly works are encouraged to become conversant in the range of options for limiting, retaining, and transferring the copy rights of these works. Resources for learning about these options are available at: <http://www.lib.pdx.edu/services/scholarlycomm/publishingresources.htm>

Retaining copyrights, or transferring only limited rights to publishers, can make it easier for you as an author to be able to distribute your own work more freely – whether for classroom use, to other colleagues, or to be able to post on your faculty web page or in an institutional or discipline repository.

Publishing contracts frequently include language which grants the publisher exclusive distribution rights. Increasingly, authors are adding addenda to these agreements to retain some of these rights. A ‘copyright addendum engine’ has been developed whereby you can choose the type of addendum you wish to use and the tool will generate the text for you. See: <http://scholars.sciencecommons.org/> to use this program.

Your rights and responsibilities in regard to ownership of other creative works, whether done solo or in collaboration, formally or informally – will influence how your work is disseminated. Understanding these rights and responsibilities will help you to make informed decisions.

Fair Use

The provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work may be considered fair if it is used for criticism, comment, news reporting, teaching, scholarship or research. If the reproduction is for one of these purposes, then a determination of fair use will be based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the contemplated use on the potential market for or value of the copyright-protected work.

The difference between “fair use” and “infringement” is not easy to determine. A determination of fair use requires a very circumstance-specific analysis of the intended use or reuse of a work.

To avoid confusion and minimize the risk of copyright infringement, the University interprets the following situations as meeting the requirements of fair use:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
- 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.
- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

Special Copyright Provisions for Academia

The Copyright Act contains specific exceptions for the use of copyright-protected materials by academic institutions. These provisions include:

- Section 107 on fair use, which is discussed above.
- Section 108 on reproduction by libraries and archives, which applies to activities such as archiving; replacing lost, damaged or obsolete copies; patron requests for entire works; and interlibrary loans.

- Section 109 on first sale, which permits the resale or lending of copies of works, providing the basis for library lending and the sale of used books.
- Section 110 on the use of materials in an educational setting, which permits certain types of content use in the classroom and in distance education.
(<http://www.copyright.com/Services/copyrightoncampus/basics/index.html>)

Technology, Education, and Copyright Harmonization (TEACH) Act

In 2002, the Copyright Law was amended to include an exemption for the instructional use of copyrighted works for digital distance education by an accredited non-profit educational institution. To take advantage of this exemption, Portland State University is required to institute policies regarding copyright and provide informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the copyright laws of the United States. Faculty and staff must provide notice to students that materials used in connection with the course may be subject to copyright protection. To use copyrighted works in digital distance education, the following conditions also must be met:

The works must fall into one of the following categories:

- Performances of nondramatic literary works or
- Performances of nondramatic musical works or
- Performances of reasonable portions of any other work or
- Display of any other work in an amount comparable to that typically displayed in a live classroom setting

But not:

- Digital educational works (Works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks) or
- Unlawful copies (copies you know or reasonably should know were not lawfully made or acquired)

Under the condition that the work is used:

- By, at the direction of, or under the actual supervision of an instructor, and
- As an integral part of a class session, and
- As part of systematic mediated instructional activities, and
- Directly related to and of material assistance to the teaching content

As long as:

- Transmission is made solely for and reception limited to (as technologically feasible) students enrolled in the course, and
- Downstream controls are instituted:

- Technological measures that reasonably prevent retention of materials in accessible form for longer than a class session
- Unauthorized further dissemination in accessible form, and
- No interference with copyright holder's technological measures that prevent such retention and dissemination

Conversion of analog to digital is permitted if:

- No digital version is available to the institution or
- The available digital version is technologically protected to prevent TEACH uses (adapted from <http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html>)

If your use does not meet the above criteria and the work is protected by copyright, you must obtain permission to use the work from the copyright holder or its agent.

(http://www.copyright.com/Services/copyrightoncampus/compliance/policy_sample.html)

Fact Finding Questions

Once you have identified the materials you want to use and determined that copyright permission is required, you must identify the copyright holder. If the copyright holder is not listed on the work, identifying the appropriate person or entity to contact regarding permission may take some investigative and creative work. A good explanation of the steps for securing permission for copyrighted works can be found on the Indiana University – Purdue University Copyright Management website:

<http://www.copyright.iupui.edu/permorg.htm> . This site provides direction for obtaining permission for many different types of materials, including online works, musical and dramatic works, motion pictures, and software. Help can also be found at Portland State Library, Portland State Bookstore, and Clean Copy.

Permissions Process

The permissions process is under development. The information required for a permission request is listed in the next section, “Information in your Permission Request.” Questions can be directed to Portland State Library, Portland State Bookstore, and Clean Copy.

Information in Your Permission Request

You will need the following information from the work you would like to copy in order to request permission:

- Title of the material, edition and volume number if applicable
- Creator/author of the material
- Publisher of the material
- Description of material, including page numbers, illustration numbers, and figure numbers
- ISBN or ISSN, if applicable

- Date of publication, if applicable
- Purpose for which you wish to reproduce the item (research, commercial, educational)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long, for example, including in a course reader for spring quarter 2007
- Instructor's full name (or name of person that will be granted the permission to use)
- Number of copies being requested or number of people using the material

(http://www.copyright.com/Services/copyrighoncampus/compliance/policy_sample.html)

The Packet Order Form used by the PSU Bookstore and Clean Copy is available here:
http://www.lib.pdx.edu/copyright/packet_order_form.pdf

Consequences of Copyright Infringement

Infringement of another person's copyright is a violation of federal law. The legal ramifications of infringement include fines that range from \$200 to \$150,000 per infringement and/or prison.

Portland State faculty and staff members are responsible for complying with copyright law, University copyright policy and this guide and for making a good faith determination of whether an intended use falls within the fair use exemption. Find help for making a good faith determination at Portland State Library, Portland State Bookstore or Clean Copy. Portland State will not assume legal responsibility for faculty or staff members who fail to make a good faith determination or otherwise do not comply with University copyright policy or copyright law.

Faculty are responsible for reviewing and vetting their course content for copyright compliance; if asking other staff to process the content, faculty should be able to provide evidence of either copyright compliance or a good faith determination.

Portland State University administration fully supports the Portland State Copyright Policy and Guidelines as stated in this document. No one should ask someone to violate copyright law and if a person is asked to violate the law, he or she can refuse without fear of retaliation. If you feel you are in an untenable position contact the University General Counsel's office, (503) 725-2656. Students are also responsible for complying with copyright law, the University copyright policy, and acting responsibly and ethically in applying fair use principles to the completion of their activities and projects. Portland State will not assume legal responsibility for violations of applicable copyright law by students. (See Portland State University's Code of Student Conduct and Responsibility, <http://www.pdx.edu/dos/conductcode.html>) If any faculty member, staff member or student has reason to believe that a copyright owner will contend that a use of copyrighted material infringes their copyright, the faculty member, staff member or student shall immediately notify the General Counsel's office. Likewise, if faculty members, staff members, or students believe that there is a dispute related to the use or proposed use of copyrighted material they shall immediately notify the General Counsel's office.