

The University of North Florida Copyright Guidelines

Introduction:

Federal copyright law protects "original works of authorship fixed in any tangible medium," which includes works of literature, music, drama, film, sculpture, visual art, architecture, and other creative media.¹ Copyright protection does not extend to the idea or discovery underlying the creative work, only to the creative work itself. A copyright owner has several exclusive rights such as the right to copy and distribute her work. Before others perform any of the activities protected as the owner's exclusive rights, they must obtain her permission. If a copyright owner discovers that someone has infringed her copyright, she can recover monetary damages in a court of law.

Typically, the copyright owner must provide permission for another person to exercise her exclusive rights. However, copyright law limits the copyright owner's exclusive rights in order to allow "fair use" of the work for educational, scholarly, and informational purposes. Therefore, in certain instances the law does not require the copyright owner to grant authorization in order for another person to copy or distribute her work.

The University of North Florida requires the members of its community to respect copyright protection. The following guidelines are intended to assist students, employees, and faculty in determining whether or not they must obtain authorization to use a copyrighted work. Please contact the Office of the General Counsel if you need assistance interpreting these guidelines.

The Fair Use Guidelines

1. Determine whether copyright law protects the work you plan to use.

Copyright law does not protect the following works:

- Works in the public domain: Our University community may freely use works that are already in the public domain without obtaining permission from the copyright owner and without applying the fair use guidelines. Works in the public domain include works that were published on or before December 31st, 1922, as well as those works outlined in the chart set forth at: <http://www.unc.edu/~unclng/public-d.htm>;
- United States government works;
- Works to which the author has clearly disclaimed a copyright interest;

¹ See, Title 17, United State's Code, Section 101.

- "The ideas, processes, methods, and systems described in copyrighted works;"²
- Facts.

2. **Determine whether you want to exercise an exclusive right**

Once you have decided that copyright law protects the work, determine whether you plan to exercise one of the copyright owner's exclusive rights. Federal copyright law states that a copyright owner has the exclusive rights to do or to authorize, i.e. grant a license³ to do, any of the following:

- Reproduce or make copies of the work;
- Prepare derivative works based on the work;
- Sell, rent, or lease copies of the work;
- Perform the work publicly;
- Display the work publicly; or
- Perform the work by a digital audio transmission.

3. **Determine whether you are exempt from the requirement to obtain permission from the copyright owner**

Federal copyright law sets forth three exemptions from the requirement to obtain copyright owner permission to exercise a copyright owner's exclusive right.

- **The Library Exemption:** Federal copyright law⁴ provides special rights to nonprofit libraries, such as the UNF library. This special exemption includes the right to archive lost, stolen, damaged or deteriorating works; make copies of works for library patrons; and make copies for other libraries' patrons through interlibrary loan. The specific parameters of the library exemption are outside the scope of these guidelines.
- **Face-to-face Teaching:** Members of our University community may publicly display and perform the creative works of other people during our face-to-face teaching activities. Our University community may also, to a limited extent, broadcast the non-dramatic literary or musical works of others in our facilities

² See, "FAIR USE OF COPYRIGHTED MATERIALS" at <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>.

³ A license is a contractual right to use the intellectual property of another. Therefore, a license agreement sets forth the parameters of the rights a copyright owner grants to another.

⁴ See, 17 U.S.C. 108, entitled "Limitations on exclusive rights: Reproduction by libraries and archives."

as a regular part of classroom instruction. Professors may broadcast copyrighted works outside of the classroom to students who are unable to attend class because of disabilities.

- **The Fair Use Exemption:** Read the next section carefully to determine whether your use falls within the fair use exemption.

4. Apply the Fair Use Guidelines to determine whether you are exempt from the requirement to obtain permission

It is time to apply the fair use guidelines. If your intended use of the copyrighted work falls squarely within these guidelines, you will most likely be free from liability for copyright infringement. It is important to note that there are no guarantees. Georgia Harper, an expert on copyright law in the university setting calls fair use "a no man's land because you enter at your own risk."⁵ The copyright statute sets forth a four-pronged test to determine whether an intended use of a copyrighted work is fair.⁶ The problem with this test is that it is highly subjective, and you never know whether your application of the test will result in the same answer as the judge who hears your case. That is why UNF has chosen to adopt fair use guidelines rather than ask each member of our community to apply the four-pronged test when he or she decides whether to seek permission to use a copyrighted work.

The fact of the matter is, even if you follow these guidelines, it is theoretically possible that a plaintiff could sue you and the University for copyright infringement. You as an individual as well as the University will be in our best positions to defend such a lawsuit if you follow these guidelines when you use copyrighted material in your academic projects. The copyright law sets forth a good-faith fair use defense, and a successful claim for this defense will likely result if you follow our fair use guidelines.

5. Guidelines for Classroom Copying of Books and Periodicals

Faculty should apply these guidelines when they make course packs containing excerpts from others' works. UNF has adopted the 1976 "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals," found at:

<http://www.lib.jmu.edu/org/mla/guidelines/Accepted%20Guidelines/Educational%20Photocopying.aspx>

⁵ See, "FAIR USE OF COPYRIGHTED MATERIALS" at Web site listed at footnote 2.

⁶ See, 17 U.S.C. 107 which lists the following 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 copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

6. Guidelines for Educational Uses of Music

Our University community should apply these guidelines when performing others' music, reprinting others' sheet music, and maintaining sound recordings of others' music, amongst other activities. UNF has adopted the 1976 "Guidelines for Educational Uses of Music," found at:

<http://www.lib.jmu.edu/org/mla/guidelines/Accepted%20Guidelines/Educational%20Photocopying.aspx>

7. Guidelines for Digitizing and Using Others' Works in Electronic Reserves

These guidelines apply to UNF's electronic reserve system, a storage facility for electronic versions of academic materials that students may view and print on computers. Our University follows the "Fair-Use Guidelines for Electronic Reserve Systems," last revised at the "Conference on Fair Use"⁷ (CONFU) on March 5th, 1996, found at:

<http://www.utsystem.edu/ogc/intellectualproperty/rsrvguid.htm>.

8. Educational Fair Use Guidelines for Digital Images

A good example of a situation in which faculty and students should apply these guidelines is an art history slide collection. Any time members of the UNF community digitize and use others' images, they should follow the "Educational Fair Use Guidelines for Digital Images," developed during the CONFU process on December 3rd, 1996 and found at:

<http://www.utsystem.edu/ogc/intellectualproperty/imagguid.htm>.

9. Fair Use Guidelines For Educational Multimedia

Our University community should use these guidelines when we use others' works in various forms of media as material in our academic projects. UNF has adopted the "Fair Use Guidelines for Educational Multimedia," issued in a non legislative report by the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives, on September 27th, 1996. The guidelines can be found at:

<http://www.libraries.psu.edu/mtss/fairuse/guidelinedoc.html>.

10. Educational Fair Use Guidelines for Distance Learning

"Distance learning is an educational process that occurs when instruction is delivered to students physically remote from the location or campus of program

⁷ The Conference on Fair Use (CONFU) was a two-year long project to negotiate guidelines for educational uses of digital works. Unfortunately, the group never reached final consensus. To learn more about the conference and the status of the guidelines visit: <http://www.ala.org/washoff/confu.HTML>

origin, the main campus, or the primary resources that support instruction."⁸ Our University has adopted two sets of Fair Use Guidelines in the distance learning context. The first set of guidelines, the CONFU Educational Fair Use Guidelines for Distance Learning apply in the following situations, "(1) live interactive distance learning classes (i.e., a teacher in a live class with all or some of the students at remote locations); (2) faculty instruction recorded without students present for later transmission. They apply to delivery via satellite, closed-circuit television or a secure computer network."⁹ To find these guidelines, please visit <http://www.utsystem.edu/ogc/intellectualproperty/distguid.htm>.

The CONFU Guidelines do not apply to "asynchronous delivery of distance learning over a computer network, even one that is secure and capable of limiting access to students enrolled in the course through PIN or other identification system."¹⁰ Therefore, the CONFU Guidelines do not apply to our Blackboard system. Because this type of technology is developing so rapidly, the participants of the Conference on Fair Use decided that they would revisit this area in the future. Our University has adopted the University of Texas Rules of Thumb for distance learning to apply to our distance learning courses delivered over our Blackboard system as well as any asynchronous delivery of distance learning over computer networks even if they are secure with limited access. These Rules of Thumb can be found at: <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>. Please note that the University of Texas provides Rules of Thumb for copyright in all of the areas from music to digital images.

11. Seek permission from the copyright owner

Once you have applied the fair use guidelines and determined that you do not fall squarely within their description of fair use, and you have determined that no other copyright exemption authorizes your use and no license grants you the right to use the work, we recommend that you consult with a University of North Florida librarian who will assist you in obtaining permission from the copyright owner. In order to familiarize yourself with this process and provide the utmost assistance to our library we recommend that you visit the following web site: <http://www.utsystem.edu/ogc/intellectualproperty/permisn.htm> where Georgia Harper from the University of Texas provides comprehensive guidance for obtaining permission to use a copyrighted work. If the University library is unable to obtain permission for you, please contact the UNF Office of General Counsel for guidance.

⁸ See, "Educational Fair Use Guidelines for Distance Learning at <http://www.utsystem.edu/ogc/intellectualproperty/distguid.htm>

⁹ See, Educational Fair Use Guidelines for Distance Learning at <http://www.utsystem.edu/ogc/intellectualproperty/distguid.htm>

¹⁰ See, CONFU Distance Learning Guidelines at Web site listed at footnote 9.