Saint Joseph’s University

Copyright Policy
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"This policy is not intended to provide specific legal advice and guidance in any single circumstance, but, rather, is intended to provide guidelines to the University community when confronted with decisions and issues involving the intellectual property rights of others. Any specific legal questions or concerns about a particular issue should be directed to the Office of the General Counsel. Additionally, because the law informing this policy will change from time as well as the policy itself, based either on changes in the law or administrative considerations, the University has the right to make changes to the Policy with or without notice and, in this regard, you should be certain when consulting the Policy online that you are viewing the most version of it."
**Introduction**

The purpose of this policy is to provide the faculty, students, staff and administrators of Saint Joseph’s University with a basic understanding of their rights and responsibilities surrounding copyright and fair use. This policy supplements the existing Intellectual Property Policy and the Policy Governing the Use of Computing and Network Resources.

U.S. Copyright law exists to promote “the progress of Science and the useful Arts.” The law accomplishes this by protecting the rights of authors and creators of literary, dramatic, musical, artistic and other intellectual works while providing specific exceptions for educational purposes.

As more and more content is available electronically, and corporate profits are at stake, copyright debates have become more contentious. Recent discussions have been dominated by peer-to-peer music sharing, fostering the perception that copyright is all about what you cannot do. But the law specifically provides for a wide range of things that can and should be done, particularly for educational purposes. Also, the University has purchased access to a broad and extensive selection of ‘copyright cleared’ content that can be utilized to the fullest extent.

Copyright law is interpretive. This policy strikes a balance between a clear respect for the intellectual property rights of others and the desire to “maximize the educational benefits which flow from the use of copyrighted material in the classroom and other settings.”

The Saint Joseph’s University Copyright Policy Committee is made up of faculty, librarians, instructional technologists, attorneys, academic administrators, and information technologists of the university. This policy contains our collective understanding of the law’s intent, its application and its reasonable compliance. It applies to all manner of instruction and pedagogy, from the face-to-face classroom, to online, to blended or hybrid courses that include some of each.

This policy document is designed as part of a broader educational process to engage the university community in a conversation about copyright best practices. It will be actively promoted and disseminated throughout campus. Once formulated, all university constituencies are expected to abide by this policy. University staff will be identified to assist in the identification and acquisition of copyright permissions and to highlight the extensive range of useful copyright-compliant materials that the University has purchased for educational use.

Finally, the policy encourages faculty authors to review the copyright of their own works and consider a range of new choices available to them.

**Policy**

It is the policy of Saint Joseph’s University to comply with U.S. Copyright Law. The use of copyrighted material other than in compliance with the U.S. Copyright Law is strictly prohibited. This policy establishes Saint Joseph’s compliance standards with Title 17 U.S. Code, the United States Copyright Act and the Digital Millennium Copyright Act of 1998.
What is Copyright Law?

Copyright Law of the United States (Title 17 of the United States Code) governs the making of copies or other reproductions of copyrighted materials. The making of an electronic copy of copyrighted work by any means, (e.g. scanning, digitizing, ripping, etc.) constitutes reproduction that is governed by Copyright law.

Copying Books, Journals and other Print Materials for the Classroom

Single Copying for Instructors

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

1. A chapter from a book;
2. An article from a periodical or newspaper;
3. A short story, short essay, or short poem, whether or not from a collective work;
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or Newspaper.

Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

1. The copying meets the tests of brevity and spontaneity as defined below; and,
2. Meets the cumulative effect test as defined below; and,
3. Each copy includes a notice of copyright.

Definitions

1. Brevity

Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. [Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

“Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and, at other times, for a more general audience that fall short of 2,500 works in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the works found in the text thereof, may be reproduced.
2. Spontaneity
The copying is at the instance and inspiration of the individual teacher.
The inspiration and decision to use the work and the moment of its use for maximum teaching
effectiveness are so close in time that it would be unreasonable to expect a timely reply to a
request for permission.

3. Cumulative Effect
The copying of the material is for only one course in the school in which the copies are made.
Not more than one short poem, article, story, essay or two excerpts may be copies from the same
author, nor more than three from the same collective work or periodical volume during one class
term.

There shall not be more than nine instances of such multiple copying for one course during one
class term. [The limitations stated in “ii” and “iii” above shall not apply to current news
periodicals and newspapers and current news sections of other periodicals.

Prohibitions to the these Privileges
Notwithstanding any of the above, the following shall be prohibited:

1. Copying shall not be used to create or to replace or substitute for anthologies,
   compilations or collective works. Such replacement or substitution may occur whether
copies of various works or excerpts there from are accumulated or reproduced and used
separately.

2. There shall be no copying of or from works intended to be “consumable” in the course of
   study or of teaching. These include workbooks, exercises, standardized tests and test
   booklets and answer sheets and like consumable material.

3. Copying shall not:
   • Substitute for the purchase of books, publishers’ reprints or periodicals;
   • Be directed by higher authority;
   • Be repeated with respect to the same item by the same teacher from term to term.

4. No charge shall be made to the student beyond the actual cost of the photocopying.
Exemptions to the Copyright Law

1. Fair Use:

Fair use is a longstanding doctrine, embodied in Section 107 of the Copyright Act, which recognizes the importance of accessing, using and building upon copyrighted works in the context of teaching, research and scholarship. The law establishes a zone of fair use protection for copying or disseminating work without obtaining permission from the copyright owner under certain circumstances. The copyright statue provides a framework for deciding whether a particular use is a “fair use.” Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

1. The purpose and character of the use, including whether such use is of 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
4. The effect of the use upon the potential market for, or value of, the copyrighted work.

<table>
<thead>
<tr>
<th>The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes</th>
<th>You will not use the work to sell or promote for commercial reasons. You do not stand to make any profit by its acquisition and dissemination.</th>
<th>You can provide supplemental reading, video or audio recording associated for your class of 20 students, during the time the class is taught (e.g. one semester). (Fair Use) Creating a course pack through FedEx Kinko’s and charging your students $100 to cover cost and “labor”. (Infringement)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Comment and Criticism</td>
<td>Writing a critical piece allows one to reproduce some of the work to support commentary.</td>
<td>Quoting a few lines from Bob Dylan song in a music review. (Fair use) Copying a few paragraphs from a news article for use by a teacher or student in a lesson. (Fair Use)</td>
</tr>
<tr>
<td>• Parody</td>
<td>Parody necessitates taking parts of an original work in order to imitate, ridicule, or “poke fun” at it. Extensive use of original work is permitted in order to “conjure up” the original.</td>
<td>Garbage Pail Kids was a parody of Cabbage Patch Kids. (Infringement)</td>
</tr>
</tbody>
</table>
**The nature of the copyrighted work**
Is the work fiction or fact? Creative works and fiction are protected more than non-fiction. Data and figures are more likely to be accepted under Fair Use.
Fair Use is also more acceptable for published works rather than unpublished works. The author of the unpublished work is given the right to control the first public expression of his or her work.
If you reproduce facts and figures that are more generally known in your writing. (Fair Use)
Using pieces of an unpublished or creative work, such as play, poetry or fiction. (Infringement)

**The amount and substantiality of the portion used in relation to the copyrighted work as a whole**
The number of copies corresponds to what is actually needed and used.
Photocopying an entire textbook for your class of 20 students (infringement).
Photocopying one chapter from a textbook and putting it on library reserve (Fair Use).

**The effect of the use upon the potential market for, or value of, the copyrighted work**
Will the sharing of this information affect the author, publisher, or other parties involved in the work? Do they stand to lose any money?
Providing for students a copy of particular software to complete an assignment. (Infringement)
Purchasing software through a license and telling students where to locate computers with the software. (Receiving permission)

2. **Reproductions by Libraries and Archives:**
Libraries or Archives can produce no more than one copy of a work, with the following restrictions:
- The reproduction or distribution is made without any commercial advantage
- The collections are available to the public or visitors
- The reproduction of the work contains a copyright notice stating its adherence to the copyright provision.

Three copies of an **unpublished** work can be reproduced and distributed solely for the purposes of preservation, security, or accessibility for research use in another library.
- The work has to be part of the library collection
• If put in digital format, work cannot be distributed in digital format and not made available to the public outside the library.

Three copies of a published work can be made for reasons of preservation, if the original is lost, damaged, stolen, deteriorated or if the format of the work is obsolete. The format is considered obsolete if the machine used to read such work is no longer manufactured or available for purchase.

• The library must determine that a replacement cannot be obtained at a fair price
• A copy made in a digital format should not be made available to the public outside of the library premises.

A work can be reproduced by a library if the work is requested by a user from another library. This extends only to one article or contribution in a periodical. (Interlibrary loan)

• The copy becomes the property of the user and the lending library has no notice that the copy will be used for commercial purposes.
• The library displays the copyright notice prominently, warning the user of infringement.

**EXAMPLE: Current notice on article reserves at circulation desk:**

Notice - Warning Concerning Copyright Restrictions: The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for the purposes in excess of “fair use,” that user may be liable for copyright infringement. The institution reserves the rights to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

3. **Performance Exceptions:**

Performance of a non-dramatic literary or musical work or of a dramatic/musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.


Performance of a non-dramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if:

• There is no direct or indirect admission charge; or
• The proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain
Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.

**Copying that is Completely Unrestricted**

1. **Published Works That Were Never Copyrighted**

Anyone may photocopy, without restriction, works published prior to 1989 that do not contain a notice of copyright. A notice of copyright consists of the copyright symbol or the word “copyright,” plus the first year of publication and the name of the copyright owner. Writings published without copyright notices prior to January 1, 1978 are not protected. Publication is defined to mean the distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or loan.

Notice requirements for works published between January 1, 1978, and February 28, 1989, were relaxed somewhat with respect to both the position of notices and the inadvertent omission of them. Effective March 1, 1989, the requirement that a work have a notice of copyright was abolished. Thus, any work created or published after March 1, 1989 is protected by copyright even if no notice of copyright is affixed.

2. **Published Works- Copyrights That Have Expired**

Anyone may photocopy, without restriction, published works on which the copyright term and any renewals have expired. Copyrights dated 75 years prior to the current year, or later, may or may not have expired, depending on whether its owner renewed the copyright after the first term of protection. Thus it is recommended that copiers either assume the protection is still in effect, or ask the copyright owner or U.S. Copyright Office whether the work is still subject to copyright protection. Usually a publisher owns the copyright or knows the owner’s location. If not, an owner can be located through the U.S. Copyright Office, Library of Congress, Washington, D.C., 20559, (202) 707-8350, [http://lcweb.loc.gov/copyright](http://lcweb.loc.gov/copyright).

3. **U.S. Government Publications**

U.S. government publications may be copied without constraint, except to the extent that they contain copyrighted work from other sources. When using copyrighted portions of U.S. government documents, follow the same rules and guidelines of other copyright protected works.

4. **State Documents**

Unlike Federal documents, state documents may be copyrighted.

5. **Phases, Facts, Ideas**

Copyright does not protect ideas, concepts, systems, methods, or simple lists (such as recipes) although it may protect expressions of them. For example, the expression of an idea as words can be protected by copyright, but the idea itself cannot. Note: although copyright does not protect names, titles, slogans, or short phrases, they may be protected as trademarks.
6. *Works that have not been fixed*

Copyright does not protect works that have not been fixed in a tangible form of expression. For example, improvised speeches or performances that have not been written, recorded, choreographed, etc., are not protected by copyright.
Using Film and Video in the Classroom

ITDL follows the classroom exemption provision of the Copyright Act (Section 110), and the Conference on Fair Use (CONFU) Fair Use Guidelines for Educational Multimedia.

Under these guidelines, most classroom uses of films, videotapes and images are permissible, provided that the showing is by instructors, guest lecturers, or students and is done in connection with face-to-face teaching activities or distance learning.

Films and videos from the collection may not be shown to a for-profit gathering. Films and videos may be shown outside the classroom, provided that the showing is to an individual or small group as part of an educational program (for example, an out-of-class assignment).

Off-Air Taping

Media Services will tape off-air television or cable programming at the request of faculty members and course instructors for purposes of instructional support and scholarship. The following conditions must generally be met to ensure that the taping does not violate copyright guidelines:

1. The requester must submit a signed requisition stating the program will be used only for instructional, scholarly, or research purposes.
2. The requester may not copy the tape, and must return the tape to Media Services within 30 days of the broadcast.
3. Media Services will erase the tape 45 days after the broadcast.
4. The above regulations do not pertain to C-Span programming, which is provided as a public service and which may be taped without these restrictions.

Audio and Video Duplication

ITDL provides audio and video duplication services for faculty members and instructors for classroom support and scholarship. Copyrighted work may not generally be duplicated without permission from the copyright holder. It is the instructor’s responsibility to obtain such permission.

The Media Center may also duplicate copyrighted audio or video works for purposes of preservation and security, provided that a replacement copy is not available for purchase.
Distance Learning and the TEACH Act

The updated Section 110(2) of the Copyright Act extends some of the face-to-face teaching copyright exemptions to distance learning situations.

Under the TEACH Act, non-dramatic 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 and are subject to following specified conditions.

TEACH Requirements (from Copyright Clearance Center)
http://www.copyright.com/Services/copyrightoncampus/basics/teach.html

- The institution must be an accredited, non-profit educational institution.
- The use must be part of mediated instructional activities.
- The use must be limited to a specific number of students enrolled in a specific class.
- The use must either be for ‘live’ or asynchronous class sessions.
- The use must not include the transmission of textbook materials, materials “typically purchased or acquired by students,” or works developed specifically for online uses.
- Only “reasonable and limited portions,” such as might be performed or displayed during a typical live classroom session, may be used.
- The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials.
- The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut & paste disabling, etc.

Even with the above every attempt should be made to get the permission of the copyright holder.

Use of Images

In a face-to-face, traditional classroom setting, a teacher may use images as long as the examples support the curriculum and are used for teaching purposes only. Images for the class should be accessible only by students in the class. Faculty should use the Fair Use guidelines to determine the use.

If images are used in an online course, or via a course management system such as Blackboard, faculty should keep in mind the 2002 TEACH Act requirements.

Tools to Assist with Copyright Compliance for Images

There are a number of sources for images that instructors can use with no fear of copyright violation. ArtStor is a subscription-based database that provides use of images for non-profit institutions. The digital library is licensed to provide images for educational and scholarly purposes without a commercial nature. ArtStor is available only to faculty, staff and students of the participating institution. Images from the database should not be made available on the open
Examples of permitted uses

- Classroom instruction and related activities (such as handouts, presentations, research, and student assignments)
- Display or performance as part of a noncommercial scholarly or educational presentation (such as in seminars, classes, lectures, conferences, exhibits, workshops, or similar noncommercial educational and scholarly activities)
- Student or faculty portfolios, term papers, theses, and dissertations, provided that you follow the access restrictions stated on the previous page
- Restricted course websites for review and study purposes, provided that these sites are not publicly accessible on the web

Examples of prohibited uses

- Any commercial use and any use that is not educational or scholarly (such as reproductions in alumni materials, in advertisements or commercial materials, or making content available to someone else for commercial uses)
- Posting content on an unrestricted website or in a publication made available on the web without access restrictions (such as posting an ARTstor image on a personal or course website that is not access-restricted, or posting a dissertation or other materials containing ARTstor content on a website that is not access-restricted)
- Reproducing content in the ARTstor Digital Library in a publication. Downloading images from the ARTstor Library for use in publications is prohibited unless expressly permitted by the content provider (usually indicated by the mark “IAP” appearing next to images). If you would like to use images for publication, please read about the Images for Academic Publishing initiative.


Images on the Free Web

There are many digital image collections on the free web. In some instances, the site will ask for payment, but others may require that the user credits the source. Please read the website carefully to find any restrictions.

Some long-standing examples of such collections are:

American Memory, Library of Congress. American Memory provides free and open access to images such as photography, maps, illustration and sheet music, as well as audio and moving images, relating to American history. Information regarding reproduction of its collection is located on its Legal page.

Creative Commons. A non-profit organization that promotes the sharing of work within the confines of copyright. Some of the content is in public domain and freely available, while some
may have some rights reserved. Creative Commons is also a site in which artists can collaborate and share work.

**Google Images.** Google Images are very easy to search and obtain, but Google does not and cannot grant the user the right to reproduce images found using Google Images. Google recommends that the user requests permission from the webmaster from which the image is retrieved.

*We recommend the following guidelines:*

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.

3. United States law governs the use of copyrighted material. 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.

4. 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.

5. The material should be used only for instructional purposes as an integral part of the course session.

6. The copy of the material used must be lawfully made and lawfully acquired.

7. 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. This type of material may be used only in accord with the contracts or licenses entered into between the intellectual property holder and the user.

8. Materials may not be digitized if they are already available in a digital format. The use of newly digitized material must be protected technologically.

9. 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.
SJU Policy on Coursepacks

A coursepack is a collection of readings selected by an instructor, intended as required or supplementary reading, for distribution to students enrolled in a class. It may consist of journal or newspaper articles, book excerpts, illustrations, etc. In print coursepacks, these materials are duplicated, bound and made available for sale to students in the class. The cost to the student only covers the cost of the actual printing of the coursepack. Digital coursepacks, made available to students in a class through BlackBoard or other course management system, require the same copyright permissions as their print counterparts.

Permission may be needed to duplicate copyrighted materials within coursepacks. One must first do the fair use analysis for each item used in the coursepack. It is the responsibility of the faculty member to have copyrighted works reproduced in a coursepack only when that reproduction complies with copyright law. Reuse of the same coursepack from semester to semester is not fair use. Copyright permission for coursepacks is usually granted by the academic period (semester); to reuse a coursepack in subsequent semesters, one will need to obtain permissions. The CCC notes that many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to a different copyright holder.

If an instructor has a coursepack printed at the SJU University Press, there is a process in place to help with obtaining permitted materials and copyright permissions.

These sections from the SJU Copyright Guidelines for Printed Media and Electronic Documents are pertinent to coursepack reproduction.

Copying for Which Permission Must Be Obtained

The guidelines prohibit the following:

1. **Course Packs – Primary Course Materials**
   
   Copying shall not be used to create, replace, or substitute for, anthologies, compilations, or collective works. Such substitution copying is prohibited unless permission is obtained whether copies or various excerpts are accumulated as coursepacks or reproduced and handed out separately. Copying shall not be a substitute for the purchase of books or periodicals.

2. **Consumable Works**
   
   There shall be no copying of or from works intended to be “consumable” in the course of studying or teaching. These include workbooks, exercises, standardized test, test booklets and answer sheets, and similar consumable material.

3. **Repetitive Copying**
   
   Copying of the same material by the same teacher from term to term is not legal without explicit permission.
Teaching in the Online Environment

The Web is providing exciting new opportunities for teaching and learning. It is a dynamic environment where distributed information can be accessed without constraints of geographic location or time. In the Web environment, it doesn’t matter if the user is accessing library or instruction resources from a computer in the library, from a computer lab elsewhere on campus, or in the middle of the night from his or her home.

The principles of copyright law that apply to electronic course content are the same as those that apply to printed course material, regardless of whether the electronic content is textual, digital or audio-visual, or where it is stored (e-reserves, Blackboard, etc.). If permission would be required for a print use, it will be required for an analogous electronic use.

The Copyright Act contains specific exceptions, as previously mentioned, for the use of copyright-protected materials by academic institutions, including Section 107 on fair use and Section 110 on the use of materials in an educational setting, which includes distance education.

Fair Use

Section 107 of the U.S. Copyright Law states that

[T]he fair use of a copyrighted work, . . . by reproduction in copies or phonorecords or by any other means specified by that section [106, exclusive rights of copyright owners], for purposes such as teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Fair use is not an exception to copyright compliance; it is more of a legal defense. It is primarily intended to allow the use of copyright protected works for commentary, parody, news reporting, research, and education. However, not all uses in an academic context are automatically considered fair use. To avoid any legal challenges, follow the guiding principle, “when in doubt, obtain permission—even for print publications.”

Determining fair use:

In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

• The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
• The nature of the copyrighted work;
• The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
• The effect of the use upon the potential market for or value of the copyrighted work.

When does Fair Use apply?

Learning to analyze a use to determine whether it’s a fair use requires some effort. Ultimately, Saint Joseph’s must focus upon licensing for those uses that go beyond fair use, or make the effort in getting permissions through the publisher/ owner of the copyrighted work.
Using personal computers to access materials for distance education requires making copies, displaying / performing, digitizing materials that are protected by copyright. This means permission must be secured from the copyright holders before this information can be transmitted to students over the Internet. There are exceptions to this rule (via the TEACH Act and fair use), but most materials will not fall within the exceptions.

The following are the circumstances, in general, that permit use of materials without first getting permissions:

- The Professor or University transmitting the materials is the author or creator of the materials and, therefore, the copyright holders.
- The copyrights to the materials have expired or are in the public domain.
- The nature and use of the materials qualifies as “fair use.”
- The nature and use of the material is exempt from copyright law under the TEACH Act.
- The articles are from journals we have a right to use through our license agreement with Copyright Clearance Center.

As a University offering online education, we must comply with copyright law by getting permissions or by falling within one or more of the above exceptions.

**Distance Education**

Copyright law provides educators with a separate set of rights in addition to fair use, to display (show) and perform (show or play) others’ works in the classroom. These rights are in Section 110(1) of the Copyright Act and apply to any work, regardless of the medium.

Until recently, however, when the classroom was remote, the law’s generous terms for face-to-face teaching in Section 110(1) shrank dramatically in Section 110(2) These limitations on what could be performed in distance education received lots of attention. In 1998, Congress directed the Copyright Office to prepare a report recommending what should be done to facilitate the use of digital technologies in distance education.

The TEACH Act expands the scope of educators’ rights to perform and display works and to make the copies integral to such performances and displays for digital distance education, making the rights closer to those we have in face-to-face teaching. But there still remains a considerable gap between what the statute authorizes for face-to-face teaching and for distance education. For example, an educator may show or perform any work related to the curriculum, regardless of the medium, face-to-face in the classroom - still images, music of every kind, even movies. There are no limits and no permission required. Under 110(2), however, even as revised and expanded, the same educator would have to pare down some of those materials to show them to distant students or make them available over the Internet to face-to-face students. The audiovisual works and dramatic musical works may only be shown as clips -- “reasonable and limited portions,” the Act says.

The TEACH Act authorizes educators to digitize works for use in digital distance education, but only to the extent authorized to use those works in Section 110(2), and so long as they are not available digitally in a format free from technological protection. For example, where 110(2) authorizes the use of movie clips, you can digitize those parts using an analog tape; but you are not authorized by the TEACH Act to digitize the whole movie. Fair use is almost always going
to be the best source of authority for making copies in any context, but especially in conjunction
with statutes like 110(2) that give us specific authorization that may not be sufficient in a
particular case.

Rights under the TEACH Act

- **Transmitting performances of all of a non-dramatic literary or musical work.** Non-
dramatic literary works as defined in the Act excludes audiovisual works; thus, examples
of permitted performances in this category in which entire works may be displayed and
performed might include a poetry or short story reading. Non-dramatic musical works
would include all music other than opera, music videos (because they are audiovisual),
and musicals.

- **Transmitting reasonable and limited portions of any other performance.** This
category includes all audiovisual works such as films and videos of all types, and any
dramatic musical works excluded above.

- **Transmitting displays of any work in amounts comparable to typical face-to-face
displays.**

Exceptions to Section 110(2):

Section 110(2) only applies to accredited nonprofit educational institutions. The rights granted
do not extend to the use of works primarily produced or marketed for in-class use in the digital
distance education market; works the instructor knows or has reason to believe were not lawfully
made or acquired; or textbooks, coursepacks and other materials typically purchased by students
individually.

This last exclusion results from the definition of “mediated instructional activities,” a key
concept within the expanded Section 110(2) meant to limit it to the kinds of materials an
instructor would actually incorporate into a class-time lecture. In other words, the TEACH Act
covers works an instructor would show or play during class such as movie or music clips, images
of artworks in an art history class, or a poetry reading. It does not cover materials an instructor
may want students to study, read, listen to or watch on their own time outside of class.
Instructors will have to rely on other rights they may have to post those materials, such as the fair
use statute, or get permission.

Conditions of use for Section 110(2):

In addition, the statute specifies a formidable list of circumstances under which the permitted
institutions may make the permitted uses:

1. **The performance or display must be:**
   - A regular part of systematic mediated instructional activity;
   - Made by, at the direction of, or under the supervision of the instructor;
   - Directly related and of material assistance to the teaching content; and
   - For and technologically limited to students enrolled in the class.

2. **The institution must:**
• Have policies and provide information about, and give notice that the materials used may be protected by, copyright;
• Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them; and
• Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

**Using Digital Content**

Digital content (e-books, Web sites, electronic databases) is subject to the same protections under the Copyright Act as non-digital or traditional (analog) works. Many assume that online content is not subject to copyright law and can be freely copied, downloaded or modified without permission. This is not true. Copyright law protects content on the Web or in any other digital format; permission is most likely required before using the work beyond what fair use would allow.

**What is Protected?**

Remember, any content protected in a non-digital format will be protected in a digital format; such as, print and electronic books; musical recordings; and web site content.

Unique uses that require seeking permissions first:

• **Scanning or digitizing a work** (article, book chapter, photograph) requires seeking permission first.
• **Using content on a Web site** requires determining if the material is copyrighted and then contacting the publisher before using.
• **Posting copyright-protected content onto a Web site** requires permission from the copyright holder.
• **Linking** to a website from your site may require the consent of the Web site owner. U.S. law is not yet clear on this issue, so to be safe, seek permissions first.
• **Copyright law protects all types of electronic discussions**, including emails and messages that you access from a computer or Web site. Do not reproduce or forward any comments you receive without first receiving permission of the copyright holder.

**Music and Copyright Law**

Digital music, like any other recorded music, is protected by copyright law. Anyone with an internet connection can easily and freely upload or download copyrighted content, especially music, without paying for it. Clearly, this could mean serious copyright infractions by Professors and students at Universities.

**Images and Copyright Law**

Before using an image “found” on the Internet, an instructor must make sure that it is not copyright-protected.
Public Domain Images

Not all images on the Internet are copyright-protected. Images in the public domain are free to use without obtaining permission. Images in the public domain are usually there because their copyrights expired. The Copyright Office recommends verifying that an image is in the public domain before using it on the Internet. In addition, Drexel Library provides access image databases such as ArtStor that can be freely used in courses.

“Fair Use” Images

The “fair use” law excludes copyright enforcement for some images on the web. For example, copyright laws may not protect photos and images used by news organizations, Universities, and Internet review sites. Factors that determine an image’s “fair use” status include intent of the image user and the effect that use of the image may have on its market value. This line between copyright infringement and “fair use” is not well defined, so act with caution.

Image Modifications

Is it legal to change an existing image and use it on your website? According to the Copyright Office, you are free to change an image as much as you like. However, the copyright will still belong to the image’s original creator. You must get the copyright owner’s permission before claiming copyright ownership of your creation.

Video and Copyright Law

Federal copyright laws are very specific about the use of videos and other works of authorship—you must gain the permission of the owner in order to publicly view the work. This includes feature films on video or DVD and instructional videos. It is important to note that venues that show movies pay for the privilege to do so.

Video And Public Exhibition

Legal requirements for copyrighted video material are in effect because the copyright holder retains the public performance rights. The owner of the copyright must give permission for public viewing regardless of how the video was obtained, whether an admission fee is being charged, whether the group is non-profit or is a commercial business, or whether a government entity is involved, be it state, local or federal

Exempting Educational Use

Known as the face-to-face teaching exemption as well as the Educational Exemption, this portion of the fair-use doctrine is outlined as a particular action that will allow for the showing of copyrighted video material. The following criteria will need to be met in order to pass the copyright laws. At the time and place of showing the video:

• A teacher/instructor must be present.
• The video viewing must take place in an educational setting and only by enrolled students.
• The subject matter of the video must be part of the curriculum being taught at that time.
• The video must be a legal copy.
## Comparison Chart - Traditional Face-to-Face vs. Online Learning

<table>
<thead>
<tr>
<th>Medium</th>
<th>Traditional</th>
<th>Online</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printed Material</td>
<td>Handouts, one copy of an article per student; one copy of a chapter (or about 10% of the entire book) per student is permissible.</td>
<td>Any materials that are copyright-protected that want to be placed online, must receive permissions to do so. May post “reasonable” portion of an article or chapter (normally less than 10%), if the portion does not “go to the heart” of the material, without permissions.</td>
</tr>
<tr>
<td>Video</td>
<td>Entire movie, where legal copy of movie is obtained, may be shown in a face-to-face classroom, provided that no fees are charged for entry.</td>
<td>Digitization of a VHS/DVD to upload into a course requires a license from the publisher. “Reasonable” clips may be shown without permissions (where reasonable is normally defined as 10% or three minutes, whatever is less). The video must be legitimately acquired (a legal copy, not home recording or bootleg).</td>
</tr>
<tr>
<td>Music</td>
<td>Using music in a face-to-face classroom is permissible without first requiring consent from the publisher.</td>
<td>If the music is from a public domain and/or freely exchangeable website, permissions is not needed. Permission, however, is needed when uploading a song from a CD, etc. A “reasonable” clip of the music may be permitted, where “reasonable” is defined as maximum of 30 seconds.</td>
</tr>
<tr>
<td>Images</td>
<td>Using images in the classroom, in power point presentations, or simple visual display, is permissible.</td>
<td>To post any image that is copyright-protected online, the Professor or student seeking to share this image in an electronic format, must first ask permission from the copyright holder.</td>
</tr>
</tbody>
</table>
Managing Your Own Copyright

Faculty members are continually creating copyrightable materials. Syllabi, lecture notes, PowerPoint presentations, project instructions, self-created cases, research papers, books and articles etc., are all examples of materials that faculty commonly produce that are entitled to copyright protection. Indeed, the author of any “original work of authorship” that is fixed in a tangible medium of expression is provided protection under the copyright law. This protection begins at the moment that the work is created and fixed in a tangible form. It is available to published and unpublished works.

Options Available to Faculty

When a faculty member publishes a book or a paper, many publishers will require that the copyrights be transferred to them. Unless specifically negotiated otherwise, however, you may be forbidden by the publisher to do any of the following in the future:

- Post a work to your own web site or to a disciplinary online archive
- Copy the work for distribution to students
- Use the work as a basis for future articles or other works
- Give permission for the work to be used in a course at Saint Joseph’s
- Allow the work to be archived in the SJU Institutional Repository
- Grant permission to faculty and students at other universities to use the materials.

Copyright is actually a “bundle” of rights. Faculty can transfer the copyright to a publisher, but still retain some or all of the rights above. We encourage faculty to consider these issues and to discuss them with their publishers.

Additionally, if faculty members wish to have their work more freely available to others, they might consider registering and licensing the work with Creative Commons. Creative Commons allows an author to license work at one of four levels of access, either use freely with attribution, use freely for non-commercial uses only, etc. http://www.creativecommons.org

Faculty Rights and the University Intellectual Property Policy

Ordinarily, the copyright becomes the property of the author who created the work. Only the author, or those deriving their rights through the author, can rightfully claim a copyright. However, if the work is a “work made for hire,” then the employer is considered to be the author to whom copyright protection is extended. A “work made for hire” includes one that is prepared by an employee with the scope of his or her employment, or work that is specially ordered or commissioned for certain uses.

Saint Joseph’s University generally allows faculty to retain ownership of their copyrightable products (See Intellectual Property Policy). The creator of copyrightable intellectual property retains his/her rights in exchange for granting “a non-exclusive, royalty-free, perpetual license to the University to use, display, copy, distribute and prepare derivative works from copyrightable material that is developed for University courses or curriculum, so that the University may continue to use such material for educations purposes.” The University will assert ownership rights only under certain extraordinary circumstances, such as if development was funded as part
of an externally sponsored research or the material was developed with extraordinary or substantially more use of University resources than would normally be provided. For on-line and distance education courses, the University will generally assert 23 ownership, but the faculty member who develops such a course will receive a stipend and may obtain a license to continue using the course at another educational institution (See Intellectual Property Policy).

**Registering your Copyright**

Under current copyright law, the author’s work is under copyright protection the moment that it is created and fixed in a tangible form of expression that is perceptible either directly (i.e., a hard copy) or with the aid of a machine or device (e.g., a Power Point presentation on a computer). This protection, however, is somewhat illusory unless the copyright is also registered. While registration is not a condition of copyright protection, the copyright law provides several inducements and advantages to encourage copyright owners to register their work.

The advantages of registering a copyright are as follows:

- Registration establishes a public record of the copyright claim.
- Registration generates a certificate of registration for the author.
- Registration is required in order to file a lawsuit for copyright infringement.
- Registering a copyright either before or within five (5) years of publication establishes *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate.
- Registering a copyright within three (3) months of publication, or prior to an infringement of the work, entitles the holder to statutory damages and attorney’s fees in a lawsuit, instead of simply actual damages and/or profits.
- Registered copyrights can be recorded with the U.S. Customs Service for protection against the importation of infringing copies.

Registration of a copyright requires three (3) elements:

1. A completed application form
2. Payment of a nonrefundable copyright fee
3. A non-returnable deposit of a copy of the work with the Copyright Office

Authors can register a work online for a fee of $35, whether you submit your deposit (copy of the work) electronically or by mail. The Copyright Office prefers this registration option. You can also register your work by using a fill-in Form CO. You complete the Form CO on your computer, print it out, and mail it along with your check ($50) and your deposit (copy of your work) to the Copyright Office. If you deposit a hard copy of your work either because you are registering your copyright electronically and do not have an electronic copy, or you are using the mail-in Form CO, or your work is already “published” so that you must deposit two (2) hard copies to comply with the “best edition” requirements, then you must print out a shipping slip, attach it to the deposit, and mail your deposit to the Copyright Office at:

Library of Congress
There are special deposit requirements for certain types of works, such as computer programs and CD-ROMs. Check the copyright Office web site for instructions on how to register these works (www.copyright.gov). All information that you provide on your copyright registration is available to the public and on the Internet.

A copyright is effective on the date that the Copyright Office receives all of the required elements; i.e., the registration form, the check and the deposit (copy of the work). If you register electronically, then you will receive an e-mail confirming receipt of your application. If you register by mail or commercial carrier, then you can request a return receipt or delivery confirmation notice from the carrier. You will not receive the actual certificate of copyright from the Copyright Office until later: about nine months for e-registration, and twenty-two months for mail registration, from the date of filing.

Often, faculty will have their original works published through a publisher. You should make sure that the publisher’s contact information is available on the website of the Association of American Publisher’s, www.publishers.org, and on the website of the Association of American University Presses, www.aaupnet.org.

This will assure that, if anyone is interested in securing your permission to copy or use your copyrighted material, you can be contacted easily.

Works that are published after March 1, 1989, are not required to carry the familiar ©, but such notice precludes an infringer from a defense based on innocent infringement in mitigation of actual or statutory damages.

Separate and distinct from the act of registering a copyright for an original work of authorship is the concept of publishing. Publishing occurs when a copy of the work is distributed to the public by sale, rental, lease or lending. An author can self-publish or use a publisher. Works can be published regardless of whether a copyright has been registered. When a work is published, the law has special requirements. Specifically, the law mandates that the copyright owner, or the owner of the exclusive right of distribution (i.e., the publisher), must deposit two (2) complete copies of the best edition in the U.S. Copyright Office for the use of the Library of Congress. This “mandatory deposit” must occur within three (3) months of the date of the first publication. To simplify matters, the copyright law provides that a single deposit can be made with the U.S. Copyright Office in order to satisfy the deposit requirements for both copyright registration purposes and for the Library of Congress.
Scenarios:

While surfing the Internet, you find a site with MP3 files of chartbuster songs, and you can download them for free. Now you have all your favorite songs on your computer and you can play them on your website. Problem? Everything on the internet is NOT public domain, most is owned by someone.

Trisha posts the home video she shot of her two-year old on YouTube. She has used music clips from a CD that she purchased recently. Problem? She thinks that because she has paid for the CD, it’s alright to use the music in her online postings.

Some people you know download MP3 files from the internet, burn them on CDs, and sell them for a profit. Problem? Republishing and selling copyrighted content commercially infringes on the creator’s copyright.

Sharing MP3 files on peer-to-peer networks is the latest craze among high school students. Problem? This is unauthorized distribution of copyrighted music.

Scenario: A professor copies excerpts of documents, including copyrighted books and journal articles, from various sources for inclusion in a coursepack to distribute to students enrolled in a class.

Question: Is the preparation of a coursepack for students in the class a fair use?

Answer: One must do the fair use analysis. If the use of the excerpt complies with the fair use criteria, then use of the coursepack is a fair use. The inclusion of the excerpts in a course pack will not change a fair use to an infringing one.

Scenario: The professor wishes to use the same coursepack that was used in a Fall, 2010 semester class for the students in a Spring, 2010 semester class.

Question: Is the repeated use of the coursepack for students in the Spring, 2010 class a fair use?

Answer: Copying of the same item by the same instructor from semester to semester is not fair use. Subsequent use of copyrighted materials requires the instructor to seek permission from the copyright holder.

Scenario: A professor copies excerpts of documents, including copyrighted books and journal articles, from various sources for inclusion in an electronic coursepack to distribute to students enrolled in a class.

Question: Is the preparation of an electronic coursepack for students in the class a fair use?

Answer: If the professor anticipates distributing the coursepack via the Web, e-mail or compact disk, then a fair use analysis is required. If the electronic coursepack is to be used in a subsequent class, then copyright permissions must be sought.