

QUESTIONS AND ANSWERS: COPYING PRINT AND DIGITAL WORKS



What is copyright?

Copyright is the right granted by law to an author or other creator to control use of the work created. The copyright law grants owners of copyright (authors and other creators and publishers) the sole right to do or allow others to do each of the following acts with regard to their copyrighted works: to reproduce all or part of the work; to distribute copies; to prepare new (derivative) versions based on the original work; and to perform and display the work publicly. Copyright protection covers both published and unpublished works.

What are the penalties for copyright infringement?

Civil and criminal penalties may be imposed for copyright infringement. Civil remedies can include an award of monetary damages (substantial statutory damages, which in cases of willful infringement, may total up to \$150,000 per work infringed, or actual damages, including the infringer's profits), an award of attorney's fees, injunctive relief against future infringement, and the impounding and destruction of infringing copies.

Recently, there have been multiple lawsuits which were settled in the publishers' favor. These judgments have ranged from \$15,000 to \$20 million—all against claims under "fair use" or "educational purposes."

What is "fair use"? How does it affect copyrighted material?

"Fair use" is a defense to an allegation of infringement under the U.S. copyright law that permits limited use of portions of a copyrighted work without the copyright owner's permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Section 107 of the Copyright Act establishes four basic factors to be considered in deciding whether a use constitutes a fair use. These factors are:

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 (literary work, work of non-fiction, poem, etc.).
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect upon the potential market or value of the copyrighted work.

No one factor alone determines a person's right to use a copyrighted work without permission. Although Section 107 of the Copyright Act includes teaching, scholarship and research, along with making "multiple copies for classroom use," as among the uses of copyrighted works that may qualify as fair use, none of these uses automatically qualifies as a fair use.

When can copyrighted works be uploaded to or downloaded from the Internet?

You may upload or download copyrighted works when you are the copyright owner of the works, when you have permission from the copyright owner, or when uploading or downloading could be considered to be a fair use. Because uploading and downloading works involves copying the work and other exclusive rights, educators and students should be cautious because some copyrighted works are unauthorized copies posted without the knowledge of the copyright owner.

This type of activity can occur when the university hosts a web site that makes copyrighted work(s) available to the campus community and/or the general public. In regards to use of Learning Management Systems (LMS) such as Blackboard or WebCT, copyright policy generally asserts that you agree to only upload or post content to which you own the copyright, or in which you have sufficient rights or have been granted permission to upload or post.

Will faculty members who assign customized course anthologies, or the colleges at which they teach, be liable for copyright infringement?

Anyone who violates any of the exclusive rights of the copyright owner is an infringer. In 1983, a number of publishers coordinated a suit against New York University and nine professors for creating similar coursepacks. The action was settled with the adoption of certain procedures by NYU. Since that time, faculty and school administrations have generally been sensitive to the copyright law.

It is important to understand that faculty and the colleges may be liable for the infringement of customized anthologies, or "coursepacks".

Who is XanEdu and what services do they provide?

XanEdu is the leading provider of "content services" to higher education, assisting institutions in maximizing the use of content resources they have invested in, and helping to reduce risk and potential liability through advising on compliance of copyright law. XanEdu leverages its online archive of licensed content to allow instructors to include the most recent and relevant resources in their course and through partnerships with leading publishers can immediately pre-approve many requests. Specific services XanEdu offers include:

- Advising on copyright compliance, and campus education on copyright law.
- Copyright clearance services.
- A turn-key CoursePack system for legal print and online delivery of supplemental reading packs.
- Consultation on how to maximize the use of the existing investment in content such as databases, library materials, digital data and other information.

XanEdu provides content solutions for over 1,400 higher education institutions around the country. The company also has an exclusive arrangement with Barnes & Noble College Stores to provide legally cleared course materials to campuses nationwide.

How does XanEdu ensure the legality of the materials it provides?

XanEdu draws from its pre-copyright cleared database and its relationships with leading publishers to research content, obtain permission, and pay royalties on all materials. We also indemnify the bookstore, faculty, and institution 100% against any damages that arise as a result of infringement claims.

How long will it take to obtain permission?

By leveraging our database of content and our partnerships with several leading publishers and the Copyright Clearance Center, XanEdu can immediately pre-approve many requests and set an accurate delivery expectation. We have a 98% clearance success rate for all other permissions, which take an average of two to four weeks. (Though the process can take as long as eight weeks depending on the copyright holder.)

How much do permissions usually cost?

Royalty fees vary for each content piece and are determined by the individual publishers, or in the case of OriginalWorks, by the author. XanEdu passes these charges directly on to students at cost. The copyright clearance process can be quite complex. Handling this element is just part of XanEdu's dedication to providing the ultimate in custom publishing solutions to bookstores and faculty.

GUIDELINES: ESTABLISHING A COPYRIGHT POLICY

Before creating the policy:

1. Solicit specific advice for your business from copyright experts, including corporate librarians and legal counsel, with special expertise in both interpreting policy and understanding your company's use of copyrighted works.
2. Solicit input from representatives from other company departments: human resources, sales, marketing, research, and general management to understand the ways copyrighted materials are used within each department, internally and externally.

Once the policy is defined:

1. Convey the policy to company employees via e-mail, the company intranet, company-wide meetings, etc.
2. Incorporate the policy into new employee welcome kits, existing employee manuals or other guidebooks.
3. Post the policy near photocopy machines, on your company bulletin boards and intranet site and in other prominent places.
4. Issue periodic reminders.

Examples of copyrighted works:

- Literary works: books, magazines, newspapers, cartoons, trade journals, training materials, newsletters, documentation
- Computer software
- Pictures, graphics and sculptures: maps, cartoon characters, photographs
- Sound recordings: compact discs, cassette tapes, phonographic records
- Architectural works: blueprints
- Dramatic works: plays, screenplays
- Audiovisual works: videotapes, DVDs
- Pantomimes and choreographic works

**Sample Copyright Policy:
Statement of Intent**

***University/Institution Name*
Copyright Policy Statement**

It is the intent of the *University/Institution Name* to adhere to the provisions of US Copyright Law (Title 17). Guidelines which clearly discourage violation of the law will be provided to all employees and constituents of the *University/Institution Name*.

The employees of the *University/Institution Name* are prohibited from copying materials not specifically allowed by fair use, copyright law, licenses or contractual agreements or permission. The *University/Institution Name* disapproves of unauthorized duplication in any form. Employees who willfully disregard the copyright policy are in violation and do so at their own risk and assume all liability. Every attempt will be made to assist employees who need information so that they can perform their duties within the intent of the law. Workshops on copyright law will be made available to staff as needed. Appropriate notices shall be placed on or near all equipment capable of duplicating copyrighted materials, including FAX machines, VCR's, public access computers, and photo-duplication equipment.

Adequate copyright records shall be maintained regarding permissions, license agreements, interlibrary loan records, Copyright Clearance Center logs, etc.

Director

Date

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