

Sullivan County Community College Copyright Compliance Policy

Sullivan County Community College (SUNY Sullivan) is a non-profit community college. The purpose of the Sullivan County Community College Copyright Compliance Policy is to provide a summary of U.S. copyright law as it relates to the use of copyright-protected works in the classroom and in the library. This policy should not be viewed as an obstacle to teaching, but a guideline on the legal, ethical use of copyrighted materials. As well, this policy serves to comply with the Digital Millennium Copyright Act which requires that a copyright policy be developed and made available to the community and a designated agent be appointed, and registered with the U.S. Copyright Office, to receive reports of copyright infringement. This policy will provide guidelines on how to remain in compliance with copyright law and information on obtaining copyright permission when using copyright-protected works.

U.S. copyright law contains many areas open to interpretation, and the goal of this policy is to provide SCCC administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers classroom issues such as photocopying, online and distance education, and coursepacks. It also covers library uses for print and electronic reserves, Interlibrary Loan, and document delivery.

This policy is not a substitute for legal advice, and proper legal advice should be obtained when necessary. The campus Copyright Agent may be able to assist you with any questions you have. The registered Copyright Agent for Sullivan County Community College is Matthew R. Smith (mattsmith@sunysullivan.edu). Those who willfully disregard the copyright policy do so at their own risk and assume all liability.

I. What is Copyright?

Copyright grants creators and distributors of creative works the right to be compensated when others use those works in certain ways. If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. The Copyright Act allows for some specific exceptions for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original works from a library collection.

The United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.), allows copyrighted works to be used without securing permission from the copyright owner by observing a "fair use" of the material. The following information is offered as a guideline to the boundaries of the fair use of copyrighted material used in research, in the classroom, for library reserves, and for interlibrary loan.

Fair Use

Fair Use (Title 17, United States Code, Sect. 107) is commonly misunderstood because of its deliberate ambiguity; the law does not state exactly what uses of a copyrighted work will be considered fair use. There is a misconception that Fair Use grants permission to use a copyrighted work, but this is not true. The Supreme Court of the United States describes fair use as an "affirmative defense" (510 U.S. 569 (1994)). Fair use is a justification defense against accusation of copyright infringement. Fair use requires a very circumstance-specific analysis as to whether a particular use, or reuse, of a work may be considered fair use.

Fair use is defensible when copyrighted work, including reproduction by photocopies thereof, is used for purposes such as criticism, commentary, news reporting, teaching (including multiple copies for classroom use), scholarship, or research without infringement of copyright, within specific parameters.

When determining fair use of a copyrighted work, consider the following factors (**in bold**):

- A finding of fair use is more likely if the **purpose and character of the use** is for nonprofit educational purposes and/or the original and the copy do not serve the same purpose, e.g. a copy cannot substitute for the purchase of the original.
- A finding of fair use is more likely if the **nature of the copyrighted work** is a compilation of fact or information rather than an imaginative work; or if the work is non-consumable; a work book or lab book may be considered a consumable.
- A finding of fair use is more likely if the use is in alignment with the **Brevity** guidelines below. The principle behind Brevity is that **the amount and substantiality of the portion used in relation to the copyrighted work as a whole does not constitute a substantial amount of the principle elements of the work.**
- A finding of fair use is more likely if **the effect of the use upon the potential market for, or value of, the copyrighted work** does not supplant sales of the original and/or stimulates sales of the original.

Brevity

When considering the amount, substantiality and cumulative effect of the portion used, please reference the chart below.

Type of work	Amount of work
Poem if less than 250 words	The complete work, if not more than two printed pages.
Poem of 250 words or longer	Excerpt of not more than 250 words.*
Article, story, or essay less than 2,500 words	Complete work.*
Article, story, or essay of 2,500 words or longer	Excerpt of not more than 1,000 words OR Up to 10% of work, whichever is less.*
Illustration (chart, graph, diagram, drawing, cartoon, picture)	One per book or periodical issue Not more than five by one artist, illustrator, or photographer. Up to 10% OR not more than 15 images from a published collective work, whichever is less.
Special works (poetry, prose, or "poetic prose," which may combine language with illustrations) of less than 2,500 words in entirety	Excerpt of not more than two published pages which <i>cannot not exceed</i> 10% of the actual text of the work.
Music and lyrics from an individual musical work	Up to 10% of the work OR not more than 30 seconds, whichever is less.

Motion media work (e.g., animation, video, or film image)	Up to 10% OR not more than three minutes, whichever is less.
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*These limits are not violated by the completion of an unfinished line of a poem or of an unfinished prose paragraph.

Cumulative Effect

(These limitations do not apply to current news articles in periodicals and newspapers. See Spontaneity.)

- The copying is for only one course.
- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author during one class term.
- Not more than three works from the same collective work or periodical volume may be copied during one class term.
- There may not be more than nine instances of such multiple copying for one course during one class term.

Spontaneity

Fair use applies when the decision to use a work is made so close to the moment of its use, for maximum teaching effectiveness, that it would be unreasonable to expect a timely reply to a request for permission. Hyperlinking to a document publicly available on the internet is not a violation, or matter, of copyright.

Prohibitions

- Copies may not be used to create, replace, or substitute for anthologies or collective works, regardless of whether they are accumulated or reproduced and used separately. *(See Types of use: Course Packs)*
- Works intended to be "consumable," such as workbooks and test booklets, may not be copied.
- Copies may not substitute for the purchase of books or periodicals.
- A teacher may not copy the same item from term to term.
- Students may not be charged beyond the actual cost of copying.

II. Types of use

Single Copying for Teachers or Researchers

For scholarly research, or for use in teaching or preparation to teach a class, a teacher may make, or may request to have made, a single copy of:

- a chapter from a book; an article from a periodical or newspaper
- a short story, short essay or short poem, whether or not from a collective work
- a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

Course Packets

Course packets created by instructors may be perceived as substituting for textbooks and therefore may not fall within fair use guidelines. Each article or chapter in a course packet that is derived from copyrighted material requires permission for use from the copyright owner (usually the publisher). Each item in the packet also must include a notice of

copyright. Individuals who purchase course packets may not be charged in excess of the cost of copying.

Multiple Copies for Classroom Use

For classroom use or discussion, 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; provided that:

- the copying meets the tests of brevity and spontaneity as defined above under *Brevity*
- the copying meets the cumulative effect test as defined above under *Brevity*
- each copy includes a notice of copyright

Library Reserves Service

The Library routinely accepts single photocopies of copyright-protected chapters, articles, etc. to be used as course reserves, with these considerations:

- the photocopies are considered to be the instructor's property
- the library may reproduce a single copy
- an instructor may provide up to three duplicate photocopies when a course is large enough to require more than one of an assigned photocopy
- copyrighted broadcast programs recorded off-air may not be placed on reserve

Fair use factors should be considered to determine the number and nature of photocopies placed on reserve for any given course.

Library Document Delivery Services

It is important to maintain a distinction between Interlibrary Loan and Document Delivery Services (DDS). Photocopying for DDS requires copyright permission.

Interlibrary Loan

The Hermann Memorial Library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by a patron do not substitute for a periodical subscription or the purchase of a work. The library follows the Commission on New Technological Uses of Copyrighted Works (CONTU) guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many under CONTU. The library tracks this information, obtains permission and pays licensing fees when necessary.

If the articles or items being copied have been obtained through a digital license, the license is consulted to see under what terms and conditions, if any, interlibrary loan is permitted.

Use of Film and Video Productions

Title 17 United States Code, Sect. 110(1) allows video or film productions to be shown by instructors or pupils when they are used:

- in face-to-face teaching activities of a nonprofit educational institution
- in a classroom or similar place devoted to instruction
- using a legitimate (not illegally reproduced) copy with the copyright notice included
- is used explicitly to support instruction and the content of the course

Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

Use of Off-Air Broadcast Programs

Unless a recording, duplication and rebroadcast license has been obtained specifically for a broadcast program, the program may be recorded off-air and temporarily retained and used for educational purposes by a non-profit educational institution as follows:

- Recordings may be retained for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording.
- Recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary.
- Recordings may be used in a classroom or similar places devoted to instruction during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period.
- Recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests.
- No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
- Recordings need not be used in their entirety, but they may not be physically or electronically altered, combined, or merged.
- All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

III. Distance Education and Course Management Systems

Technology, Education and Copyright Harmonization (TEACH) Act

The Technology, Education and Copyright Harmonization (TEACH) Act expanded the rights colleges and universities have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS). The act regulates the digital transmission of materials to students during classroom-type instruction delivered over the internet. The TEACH Act does not apply to materials students may study, read, listen to or watch on their own time outside of class, including electronic reserves.

The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission.

Transmission of Copyrighted Audio-Visual Material for Distance Learning

Non-dramatic literary works vs Dramatic literary works

Performance, reading, or display of a *non-dramatic* literary work such as a news article or the recitation of a poem or speech, or non-dramatic works of music (a performance) may be transmitted in its entirety.

Performance, reading, or display of any other work, such as a *dramatic* literary work such as a film or stage play, or a dramatic musical work such as a music video, musical film or theatrical or operatic production may be transmitted only in a limited and reasonable amount as determined by fair use guidelines (*see Fair use:Brevity*). Commercially produced media must be used in accordance with the terms of the license agreement.

Copyrighted audio-visual material, including audio and video files, and still images, may be transmitted under the following specific conditions:

- It is transmitted through a secure, password-protected course management system.
- It is directly relevant to the teaching content of the course.
- It is used as part of a regular, systematic, mediated instructional activity.
- Copyright notice is shown.
- It is a legally acquired, digital copy.
- The amount and degree of material used is similar to what would be used in a face-to-face instructional setting (*see Brevity*).
- It is not produced or marketed primarily for use in the online distance education market.
- Students' ability to retain or further distribute the material is limited by technology.

Audio, video, and still images existing only in analog format may be converted to a digital format for use in distance learning instruction under these conditions:

- A good faith-effort to locate a digital version of the material has been unsuccessful, or the only digital version available is protected by technological measures
- Only the amount authorized to transmit has been copied

IV. The Digital Millennium Copyright Act (DMCA)

The DMCA contains provisions forbidding circumvention of digital protections and protecting copyright management information. The DMCA provides limited liability for college and university networks acting as Internet service providers (ISPs) for students and faculty, provided that certain requirements are met:

- Appoint a designated agent to receive reports of copyright infringement. Register the agent with the U.S. Copyright Office.
- Develop and post a copyright policy. Educate campus community about copyright.
- Comply with "take down" requests.
- Apply measures to protect against unauthorized access to content and dissemination of information.
- Use only lawfully acquired copies of copyrighted works.

V. How to obtain copyright permission

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

The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that you wish to use the materials. If you need a quicker permission, let the copyright owner know this and he/she may be able to get back to you more quickly.