

Instructors often seek to duplicate the written copyrighted works (protected works) of another to be used for professional purposes or to be disseminated in the classroom to further learning. Duplication can occur by physically copying the protected work or having the work transferred or retransferred into an electronic format. Classroom dissemination of protected works can occur when the professor distributes actual copies of the work to students or enables the students to obtain electronic copies via email, ANGEL, or other electronic mediums. It is the responsibility of any faculty who duplicates or disseminates such protected works to comply with all applicable copyright laws and regulations.

The general rule is that copyright holders have the exclusive right to their works. As such, instructors are generally prohibited from duplicating and/or disseminating the protected works of another without the copyright holder's permission. Instructors are encouraged to obtain the written permission of copyright holders before duplicating their protected work. Permission may be sought from the actual copyright holder or the Copyright Clearance Center at www.copyright.com. Copyright holders may require a fee before they will grant the requesting instructor permission to duplicate their protected work. Often time, the author of the protected work is not the copyright holder so getting permission from the author may not be enough.

There are two recognized exceptions and another potential exception to the general rule that says copyright holders have the exclusive right to their works. The two exceptions are: 1) The Fair Use Exception and 2) Works in the Public Domain. The other potential exception applies to orphan works. This policy attempts to conservatively summarize these exceptions; however, more liberal applications of these exceptions may apply. You are encouraged to contact Pittsburg State University's General Counsel for advice before you seek to duplicate protected work or if you have any questions or concerns about copyright infringement.

The Fair Use Exception

The fair use exception allows an instructor to duplicate protected works, under certain circumstances and if certain criteria are met, for purposes such as criticism, comment, news reporting, teaching (including multiple copies and course packs), scholarship, or research without the need to get the copyright holders' permission or pay them a fee. The criteria vary depending on whether or not the instructor is making a single copy for his/her own use or multiple classroom copies or course packs for classroom use.

An instructor may make a single copy, without the copyright holder's permission, of any of the following for his or her scholarly research or use in teaching or preparation to teach class:

- a. A chapter from a book.
- b. An article from a periodical or newspaper.
- c. A short story, short essay or poem (whether or not from a collective work).
- d. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

An instructor may make multiple classroom copies or course packs for classroom use, without the copyright holder's permission, if the instructor posts a notice of copyright on each copyrighted item and meets the following tests:

1. The brevity test
2. The spontaneity test; and
3. The cumulative test

The brevity test is met for the copying of a poem if the poem has fewer than 250 words, or it is an excerpt of not more than 250 words. For other works of language, the brevity test is met if it's a copy of a complete work of 2,500 words or an excerpt of 1000 words or 10% of the total length of a longer work, whichever is less. The brevity test is met for the copying of an illustration (i.e., chart, graph, cartoon) if it is limited to one illustration per book or periodical. The brevity test is met for special works (combinations of language and illustration) if the copy is no more than two published pages and contains no more than 10% of the words.

The spontaneity test is met when the instructor's decision to use the protected work and the moment of its classroom use are so close in time that it would be unreasonable to expect a timely reply for permission from the copyright holder.

The cumulative test is met if the protected work is used for one course and not more than one piece of protected work or two excerpts of protected work from the same author or three pieces of protected work from the same collective work. There shall be no more than nine different copyrighted works distributed per class per semester.

Even if an instructor meets the above tests, protected work should not be copied, without the copyright holder's permission, if it is used as a substitute for the works, as a substitute for the purchase of the protected work, if the duplication is at the request of the instructor's superiors, if the duplication is repeated with respect to the same protected work by the same instructors from term to term, or if the student is charged beyond the actual cost to duplicate the protected work. Instructors should immediately contact Pittsburg State University's General Counsel if their superiors request the duplication. Finally, even if an instructor does not meet the above tests, an instructor may generally duplicate a recent news article for classroom dissemination. However, this exception may not apply if the same article is duplicated and disseminated on a continual or regular basis. If this is the case, the instructor should inquire with the library to see if it subscribes to a news database that contains the article and have the students access the article through the library.

Works in the Public Domain Exception

Works in the "public domain" may be copied and disseminated without the copyright holder's permission. Generally, a work is considered in the public domain if it is at least 95 years old, if the creator has expressly disclaimed a copyright interest, or if it is created by the federal government.

Orphan Works

There is another potential exception to the general rule that says the copyright holder has the exclusive rights to the protected work. This potential exception applies to orphan works which are defined as works for which no copyright holder can be found, and thus for which permission to use these works cannot be obtained. To be an orphan work, the instructor should be able to show that he/she has exercised good faith and due diligence in seeking permission from the copyright holder but could not determine the copyright holder. This exception has been endorsed by numerous scholars and

legislatures. However, there is no law or court decision that directly applies this exception to the general rule. Instructors are encouraged to contact Pittsburg State University's General Counsel for guidance before relying on this exception.

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