

# Samford University

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**Applicable to:** University

**Responsibility for Administration** Academic Affairs and Library

**Title:** Copyright Policy

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## Copyright Policy of Samford University

### I. Purpose & Scope

As an institution dedicated to the lawful dissemination of knowledge and ideas, Samford University is committed to the protection of the copyright laws of the United States (Title 17, United States Code). This policy has been created to inform University faculty and staff of the law as it pertains to copying and other reproductions of copyrighted materials. It does not address every possible question of copyright compliance that might arise on campus, but seeks to provide best practice advice.

### II. Complying with Copyright Laws

Not every copyrighted work requires permission before it is used. The first step in complying with the copyright laws is to determine whether you need permission from the copyright owner to use the copyrighted work. Three questions must be asked:

**Is the work protected?** This policy does not apply to, and anyone may freely use:

- *Works in the public domain.* The term “public domain” refers to creative materials that are not protected by intellectual property laws such as copyright, trademark, or patent laws. The public owns these works, not an individual author or artist. Anyone can use a public domain work without obtaining permission. Material that resides in the public domain includes works whose copyrights have expired; works that were created too early for copyright protection; and works created by the Federal government. For more information about when a work passes into the public domain, please see the following:  
<http://copyright.cornell.edu/resources/publicdomain.cfm>
- *Works that lack originality.* These include logical, comprehensive compilations like the phone book and unoriginal reprints of public domain works.
- *Works created and printed by the federal government.*
- *Freeware.* Expressly available for no price, free of most restrictions software. It can include both open source and closed source software.
- *Facts.* But not facts that have been presented in an author’s specific format that contain the requisite amount of creativity, such as a table, graph, etc.
- *Ideas, processes, methods, and systems described in copyrighted works.*

**Do you wish to exercise one of the owner’s exclusive rights?** If the work is protected you will be exercising the owner’s exclusive rights if you

- *Reproduce.* Make a copy.
- *Create a derivative work.* Use a work as the basis for a new work.
- *Distribute a work.* Electronically distribute or publish copies.
- *Publicly perform a work.* Publicly perform music, prose, poetry, a drama, or play a video or audiotape or a CD.
- *Publicly display a work.* Publicly display the work itself or an image of the work on a computer screen or otherwise.

If you wish to exercise an exclusive right, is your use exempt from liability for infringement? If an exemption does not apply, you need permission. Common exemptions include:

- Special rights of libraries.
- Educational performances and displays.

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- Fair use.

## a. Special rights of libraries

Copyright law creates special exceptions for libraries and archives. These exceptions allow academic and public libraries to photocopy, duplicate, and maintain on reserve copyrighted works for the use of library patrons.

## b. Educational performances and displays

This exception allows instructors and students to recite poetry, read plays, show videos, play music, project slides, and engage in many other performances and displays of protected works in the classroom setting. This exception only permits displays and performances in the classroom—not the making of copies or the posting of digital works on servers.

No permission for the performance or display of copyrighted works in the classroom is required if the following conditions are met: 1) The performance is by an instructor or student; 2) The performance is in the course of face-to-face teaching activities (Performances or displays in distance learning courses are not currently allowed by copyright law); 3) The performance is in a classroom or similar place devoted to instruction of students of the university who are registered for the course in which the performance takes place; and 4) Any audio or video work must be presented from a copy that was lawfully made and obtained.

## c. Fair use

Most copyright issues involve the fair use of existing works. United States Code, Title 17, Section 107 specifies that: Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include -

1. **the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.** The fair use statute itself indicates that nonprofit educational purposes are generally favored over commercial uses. In addition, the statute explicitly lists several purposes especially appropriate for fair use, such as criticism, comment, news reporting, teaching, scholarship, or research. Courts also favor uses that are “transformative,” or that are not merely reproductions. Fair use is more likely when the copyrighted work is “transformed” into something new or of new utility, such as quotations incorporated into a paper.
2. **the nature of the copyrighted work.** This factor centers on the characteristics of the work being used. Courts have tended to apply fair use differently to different types of works. For example, the unpublished “nature” of a work, such as private correspondence or a manuscript, can weigh against a finding of fair use. The courts reason that copyright owners should have the right to determine the circumstances of “first publication.” Use of a work that is commercially available specifically for the educational market is generally not favored by the courts. Additionally, courts tend to give greater protection to creative works; consequently, fair use applies more broadly to nonfiction, rather than fiction. Courts are usually more protective of art, music, poetry, feature films, and other creative works than they might be of nonfiction works.
3. **the amount and substantiality of the portion used in relation to the copyrighted work as a whole.** The “amount” used is usually evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. However, even if you take a small portion of a work, copying will not be fair use if the portion taken is the “heart of the work”.
4. **the effect of the use upon the potential market for or value of the copyrighted work.** This factor means fundamentally that if you make a use for which a purchase or license of the copyrighted work could realistically have been made, that fact weighs against a finding of fair use.

Fair use depends on the circumstances of each case. You must assess whether your proposed use is “fair” based on the above four factors in the statute. Not all factors need to weigh either for or against fair use, but overall the

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factors will usually lean one direction or the other. A **Fair Use Checklist** is available to assist faculty and staff in determining what actions are considered fair use. If it is not within fair use, you generally must seek permission from the copyright owner. All four factors, and other possible circumstances, work together in the fair use equation. The following duplication activity generally will not per se constitute fair use and should not be engaged in by University faculty or staff without permission from the copyright owner:

- Duplication of materials for profit.
- Duplication of material from published textbooks.
- Duplication of unpublished materials.
- Duplication of computer software for multiple use.
- Duplication of the same materials for classroom use term after term.

Samford recommends that any University employee who makes copies of protected works for use in the classroom comply with copyright law by being able to demonstrate that the proposed use is "fair use" by completing the **Fair Use Checklist** or by being able to show evidence of having secured permission for the use. Therefore, the user should complete and retain a copy of the **Fair Use Checklist** for each "fair use" of a copyrighted work, which will establish a "reasonable and good faith" attempt at applying fair use should any dispute regarding such use arise. This recommendation applies to all copying of protected work regardless of whether the copying occurs on campus or off campus, on privately owned copy machines or at commercial copy shops. Finally, all uses of copyrighted materials, whether a "fair use," use under a license, or use under other exceptions, should include proper copyright notice and attribution.

### **III. Common educational uses of copyrighted materials**

Authors, publishers, and educators have developed an Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions. These Guidelines are based on the fair use four-factor test. They address the classroom use of single copies, multiple copies, and anthologies of protected works. It is extremely important to recognize that these Guidelines are not the *legal* standards of fair use and that none of these below guidelines have been tested in court. Briefly summarized, the guidelines are:

**1. Single copying** by teachers for scholarly research or teaching is permitted so long as the single copy does not exceed more than one chapter from a book; one article from a periodical or newspaper; one short story, essay, or short poem; one chart, graph, diagram, drawing, cartoon, or picture from one book or periodical.

**2. Multiple copies** for one-time distribution to students in class may be made without permission if each of the following applies:

- A.** The instructor makes no more than one for each student;
- B.** Includes the notice of copyright;
- C.** Is selective and sparing in choosing poetry, prose and illustrations;
- D.** Makes no charge to the student beyond actual cost of photocopying; and

**E.** The copying meets the tests of "brevity," "spontaneity," and "cumulative effect."

The tests of brevity and cumulative effect involve a rather tedious analysis of the number of words in the excerpt and how often the multiple copies are used. The spontaneity test is easier to apply and usually dooms to failure efforts to justify as fair use the use of multiple copies without permission. The use is spontaneous if:

- A.** The copying is initiated and inspired by the individual teacher; and
- B.** 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.

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Homemade anthologies of written works, or "coursepacks" rarely meet the spontaneity test.

### 3. Permissions are required for copying the following:

- A. Copying that is used to create, replace, or substitute anthologies, compilations, or collective works. (Most coursepacks are the result of copying that creates an anthology or compilation).
- B. Consumable works such as workbooks, exercises, standardized tests, test booklets, and answer sheets.
- C. Unpublished works.
- D. Materials copies of which are used as a substitute for the purchase of books or periodicals.
- E. Materials repetitively copied and used by the same teacher from term to term.

- **Obtaining permission**

When creating course packs, employees may obtain copyright permission through companies that specialize in obtaining such permissions:

Lad Custom Publishing at <http://www.ladcustompub.com>

Xanedu at <http://www.xanedu.com>

Copyright Clearance Center, Inc. at <http://www.copyright.com>

The University Bookstore will assist in obtaining the necessary permission. Copyright permissions may often be obtained through a journal, publisher, author, or book's website. If no website is available, copyright permissions may be obtained by e-mail, telephone, or mail. Many requests for permission can be granted within 24 hours. Others may take up to six weeks. Please plan accordingly.