Using Copyrighted Works in Teaching

Dr. K. Matthew Dames
Interim Dean of Libraries and University Librarian
Director, Copyright and Information Policy Office
Syracuse University Libraries
http://copyright.syr.edu/guide/

December 2013
Table of Contents

1. Copyright Basics ........................................... 5
2. Overview ....................................................... 6
3. Detailed Recommendations .................................. 8
   (a) Books ......................................................... 9
   (b) Journal Articles ............................................. 10
   (c) Music and Audio ............................................ 12
   (d) Video ......................................................... 14
   (e) Images and Visual Art ...................................... 16
   (f) Using Blackboard and Other LMS Packages ............ 17
4. Legal Principles ............................................... 20
   (a) Unlimited Uses .............................................. 20
   (b) Allowable Uses: Licenses .................................. 20
   (c) Allowable Uses: Statutory Limitations ................. 21
   (d) Fair Use ....................................................... 23
   (e) Infringing Uses .............................................. 23
5. Key Contacts ................................................... 24
6. Conclusion ....................................................... 25

http://dx.doi.org/10.14305/00-00.rt.2013.1
Every day, members of the Syracuse University community create and use various forms of intellectual property. As creators of intellectual property, we expect others to abide by certain laws, regulations, and customs so that our work is used appropriately. As intellectual property users, we have a legal duty to abide by those same laws, regulations, and customs so that we use and share protected works appropriately.

Copyright is the most prevalent form of intellectual property affecting the Syracuse University community. Each time we write a paper, check out a book from the Libraries, exchange and share information over the University’s computer network, or watch a movie during a class, copyright plays a role. In recent years, litigation over copyright issues has become more common, complex, and costly. As a result, a failure to comply with applicable legal requirements may subject both the University and individual users to liability, in addition to public criticism and adverse publicity.

While copyright is complex, this Guide provides recommendations that will help faculty members, teaching assistants, and online course administrators legally use a variety of protected works for curricular purposes. All University employees are expected to comply with these recommendations when using protected works for curricular purposes. This Guide is available online and in print and will be updated from time to time to reflect new modes of instruction and changes in the law. Any changes to the online version of the Guide will supersede previous print versions in circulation.

I am grateful for the efforts of an ad hoc committee on copyright, chaired by College of Law Professor Lisa Dolak, which worked from 2010 through 2012 to help frame these complex issues and determine how best to provide guidance to our faculty. Thanks also to the several Senate committees that reviewed an earlier draft for their helpful comments and suggestions, which helped to improve this document. This will remain a living document, so I encourage anyone with recommendations for improving its clarity and utility to contact the Director of the University’s Copyright and Information Policy Office, K. Matthew Dames.

Thank you in advance for your anticipated cooperation. If you have questions regarding the content of this Guide, please contact the Director of the Copyright and Information Policy Office, K. Matthew Dames, at 443-5533 or cipa@syr.edu. For legal interpretations or advice regarding copyright law, please contact Senior Vice President and General Counsel Dickens Mathieu, Esq. at 443-9732 or dmathieu@syr.edu.

Eric F. Spina, Ph.D.
Vice Chancellor and Provost
Copyright Basics

» Assume everything you use is protected by copyright law—even if there is no copyright notice.
» Copyright owners receive certain rights as soon as the work is created.
» Copyright owners usually determine how and when the public may use their works.
» Copyright limitations allow faculty to use portions of protected works without requiring permission, and sometimes without requiring a license.
» Provide full attribution for all materials in a form satisfactory to scholars in the field for each work included or excerpted.

According to the U.S. Copyright Office, copyright is a form of intellectual property given to an author who creates “original works of authorship” that are “fixed in a tangible medium of expression.” Examples of protectable works include literary works, dramatic works, musical works, motion pictures, pictorial works, and sound recordings.

Copyright protection occurs automatically upon creation, whether or not the author registers the work with the Copyright Office. The protection typically lasts for the author’s life, plus an additional 70 years.

Given these facts, you can safely assume that virtually every work you encounter as a member of the Syracuse University community—notes, articles, books, magazines, CDs, DVDs, MP3 files, Web pages, computer code—is protected by copyright, and that some person or entity owns that copyright.

Federal law gives the copyright owner a bundle of exclusive rights that he alone can exercise. These exclusive rights include the right to reproduce, adapt, or distribute all kinds of works, and the right to perform publicly or display publicly certain types of works.
Copyright owners have the right to grant permission for others to use their protected works. In certain cases, however, members of the public may use protected works in spite of an owner's rights. Copyright limitations (also called exceptions) restrict an owner’s exclusive rights and allow non-owners to use portions of a work for public interest purposes, sometimes without requiring the owner's permission or without requiring payment of a permission fee. Common copyright limitations that apply in higher education are the classroom and online teaching exceptions, the first sale doctrine, and fair use. This Guide reviews additional legal principles in Chapter 4.

Copyright is different than plagiarism. Copyright is a legal concept whose goal is to protect original works of authorship as a means of encouraging production of those works. Plagiarism is an ethical concept that occurs when one uses another author's language, ideas, information, or original material without acknowledging the source. Plagiarism is considered academic dishonesty at Syracuse University.
2. Overview

The chart on the following two pages provides a decision-making framework for permissible uses of copyrighted works within the context of teaching and instruction. More detailed information is included in the sections that follow. Contact the University’s Copyright and Information Policy Adviser to get answers to any recommendations, use, or permissions questions.

Key summary points

» Faculty members may use portions of copyrighted works for curricular purposes.

» Under limited circumstances, an entire work may be used for curricular purposes.

» Make extensive use of University-licensed resources, including full-text articles and music, within the license’s terms and conditions.

» Fair use is determined by a four-factor, fact-specific test, not merely by intended educational or scholarly use.

» These recommendations may change according to facts, law, or University policy.

» When planning courses, allow sufficient time for possible copyright consultation and production.

» Check copyright.syr.edu for the most complete and updated information.
<table>
<thead>
<tr>
<th>MATERIAL</th>
<th>RECOMMENDATIONS</th>
<th>WHAT YOU MAY DO</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Books and Monographs</td>
<td>» Link to full-text, where available &lt;br&gt;» Copy 10% or 1,000 words</td>
<td>» Provide multiple hard copies to students for classroom use &lt;br&gt;» Place essential resources on Libraries course reserves</td>
<td>» Avoid posting scanned copies, either on or outside Blackboard &lt;br&gt;» Rotate &amp; update assignment materials regularly &lt;br&gt;» Alternatives include buying the book or licensing the e-book</td>
</tr>
<tr>
<td>Articles</td>
<td>» Link to full-text, where available &lt;br&gt;» Copy 10% or 1,000 words</td>
<td>» Link from Blackboard to full-text of Libraries-licensed e-resources &lt;br&gt;» Place essential resources on Libraries course reserves</td>
<td>» Libraries offer many academic resources in online and print versions &lt;br&gt;» Avoid posting scanned copies, either on or outside Blackboard &lt;br&gt;» Order coursepacks from SU Bookstore, if necessary</td>
</tr>
<tr>
<td>Audio</td>
<td>» Link to or stream online audio, where available &lt;br&gt;» Limit song lyrics, sheet music, and music video to 10% or 30-second maximum</td>
<td>» Play audio in class &lt;br&gt;» Play online audio segments &lt;br&gt;» Place essential resources on Libraries course reserves</td>
<td>» Coordinate audio segment creation with OLS or VPU &lt;br&gt;» Use may also be covered by University performance rights licenses &lt;br&gt;» Alternatives include buying the audio</td>
</tr>
</tbody>
</table>
### Video
- Link to or stream online video where available
- Use three minutes or 10% of the total work, whichever is less
- Show video in class where connected to curricular purpose
- Show online video segments where connected to curricular purpose
- Place essential resources on Libraries course reserves
- Coordinate video segment creation with OLS or VPU
- Non-curricular use (including student clubs) requires a performance license
- DMCA exemptions may apply
- Alternatives include renting or buying the video

### Images
- Five copies of artistic or photographic images
- 10% of the collection or 15 total images from a published image collection
- Show images in class where connected to curricular purpose
- Place essential resources on Libraries course reserves
- Images created from photography and scanning may qualify as fair use
- Using images outside Blackboard or for publication may not be a curricular use

### Using Blackboard
- Use links to online material instead of uploading copies
- Make resources available only to enrolled students, for the semester
- Don’t remove or interfere with copy protections or copyright notices
- Don’t use the same work repeatedly
- Include links to online versions of curricular material
- Post copies of copyrighted material only in limited portions, for limited duration
- Images created from photography and scanning may qualify as fair use
- Using images outside Blackboard or for publication may not be a curricular use
CONTACTS for assistance in implementing these recommendations:

» **General copyright questions:**
  K. Matthew Dames, Director, Copyright & Information Policy Office
  Amy Vanderlyke Dygert, Copyright Librarian
  cipa@syr.edu; 443-5530

» **Using Blackboard:**
  Michael Morrison, Online Learning Services
  ols@ot.syr.edu; 443-2677

» **Coursepacks, permissions:**
  Kathleen Bradley, Bookstore
  textbook@syr.edu; 443-9900

» **Video and transfer conversion:**
  Donal Little, Video Production Unit
  dmllittle@syr.edu; 443-5644
3. Detailed Recommendations

» Faculty members may use limited portions of copyrighted works for curricular purposes, as summarized in the Overview.

» Under limited circumstances, faculty may use an entire work for curricular purposes.

» You are encouraged to make extensive use of works the University has licensed for the University community, including scholarly articles and music, within the license’s terms and conditions.

As a general rule, you may use limited portions of lawfully acquired copyrighted works for teaching purposes when using those works to support curriculum-based instructional activities.

In contrast, you may use an entire work when the work is in the public domain; the work is not eligible for copyright protection, or where you own the rights in the work.

You are encouraged to use works the Libraries have licensed already. The Libraries spend millions of dollars annually so members of the University community can safely and legally access and use a wide range of scholarly journals, electronic books, and music. Use of licensed works—including works accessed through the Libraries’ database collection and Creative Commons-licensed materials—are subject to the terms and conditions of the resource’s license agreement. The terms in these agreements typically override copyright considerations, and may be more or less restrictive than what copyright allows.

The recommendations in this chapter provide endorsed principles for commonly used types of media. The use principles will vary widely based upon medium.

The recommendations presume you are:

» Using copyrighted materials for teaching and curricular purposes, not for scholarly research, scholarly publication, or commercial purposes;

» Teaching for Syracuse University, whether in a non-tenured or tenure-track status;
» Using the University’s courseware management system for students to access course materials, whether the course meets exclusively in person, partially in person and partially online, or exclusively online;

» Using legally purchased or legally obtained materials; and

» At all times abiding by the University’s rules, regulations and policies, and applicable state and federal law.

(a) Books

1. What Is Included

» Books

» Reports

» Dissertations and theses

2. Use Recommendations

The standard for books is to use 10% of the text or 1,000 words, whichever is less, depending upon the book’s content and subject matter. This typically will equate to a single book chapter.

3. Special Circumstances

» Poems: You may use an entire poem of fewer than 250 words. For multiple poems by a single author, use three poems or less. For multiple poems in an anthology, use five poems or less.

» Rotation principle: Be sure to rotate use of book chapters, both in class and on any University course management system. If you are using the same book chapter for a single academic year, you should arrange to pay a permission fee for use during the next academic semester and use another resource.

» Digitizing books: Digitizing portions or chapters of books requires a format shift from the paper-based book to a digital document format (usually an Adobe Acrobat, or PDF file), and doing so may constitute copyright infringement. Consult the Copyright and Information Policy Office at cipa@syr.edu prior to posting or distributing digitized content online.
If posting digitized material online, you are responsible for removing the article from the University’s courseware system at the end of the semester, when grades are due to the Registrar.

(b) Journal Articles

1. What Is Included

- Single articles from journals or multivolume serials
- Magazine articles
- News articles

2. Use Recommendations

The standards for using articles and serial material are:

- The entire work IF
  - a hyperlink to the article is provided through Blackboard to a University-licensed resource

OR

- the article is assigned in a syllabus AND students do their own research to find the article;

- Otherwise, 10% of the text or 1,000 words, whichever is less.

Using links instead of posting electronic versions of articles (i.e. an Adobe Acrobat or Microsoft Word document) into the courseware system avoids potentially infringing electronic copying and distribution. Alternatively, allowing students to find the work on their own reinforces needed research skills. Further, linking to the resource from Blackboard limits authorized access to students who are enrolled in the class, avoids having to remove posted articles at the end of each semester, controls the financial and paper costs that may arise through the production of coursepacks, and optimizes the use of resources for which the Libraries spend millions of dollars annually.

If you need help in locating appropriate scholarly articles or journals for your class, please contact your school or college’s subject specialist. A list of subject specialists is available online at http://library.syr.edu/research/askus/subject-specialists.php.
3. Special Circumstances

» **Coursepacks:** Coursepacks are copies of compiled articles or book chapters that are printed and reproduced for curricular and educational use. Without exception, coursepacks require payment of permission or reproduction fees, and often both. Contact the SU Bookstore at http://bookstore.syr.edu/ for more details.

» **Harvard Business Review articles:** All Harvard Business Review (HBR) articles are covered by a license that specifically prohibits using persistent links within a courseware management system (such as Blackboard) to a specific HBR article. Instead, have students perform research to find and read the article, or use and link to an alternative article.

» **Harvard Business Review (HBR) case studies:** Use of HBR case studies must be licensed as they are not covered by the Libraries’ database license agreements. Contact the SU Bookstore at http://bookstore.syr.edu/ for more details.

» **Database coverage:** On occasion, the Libraries’ license agreements may exclude a resource or exclude the time frame in which a particular article was published. In these instances, you have several options. First, research whether a Web-based surrogate exists. Second, request the article through the Libraries’ Interlibrary Loan (ILL) service. These articles may be posted to the University’s courseware system. You are responsible for removing the ILL article at the end of the semester, when grades are due to the Registrar.

» **Articles that are unavailable through licensed resources:** Please contact the Libraries’ subject specialist assigned to your school for information on how to access or make available materials that are not available through the Libraries’ electronic resources collection. A list of subject specialists is available at http://library.syr.edu/research/askus/subject-specialists.php

» **Posting links through Blackboard:** For help with posting article links through the University’s courseware system, please review instructions for Adding Academic Content to Blackboard at http://library.syr.edu/find/reserves/faculty/blackboard.php, or contact Online Learning Services at http://ols.syr.edu/contact-us/.
1. What Is Included

» Non-music audio recordings (all analog and digital formats)
» Sound recordings (all analog and digital formats)
» Song lyrics
» Sheet music and scores
» Music video

2. Use Recommendations

The standard for using music or audio is to:

» stream sound recordings and non-music audio recordings;

AND

» limit song lyrics, sheet music and music video to 10% or a 30-second maximum.

The University maintains performance rights licenses that allow a wide range of musical performances on campus, including through the University’s courseware management system. These licenses allow faculty to use sound recordings, the main audio category, for curricular purposes. Instructors are responsible, however, for preparing audio files for use in the University’s courseware management system.

3. Special Circumstances

» Format shifting: Although the University’s performance rights licenses allows you to stream sound recordings through Blackboard or other University-owned and authorized courseware management systems, they do not allow the sound recording to be copied or digitized for the purpose of transferring a physical format (i.e. album, compact disc) to a digital format. Please consult with the Director of the Copyright and Information Policy Office before adding format shifted—or “ripped”—music to the University’s course management system.
iTunes and other digitally licensed copies: Most legally licensed digital music files are bound by a contract that says they can be used for personal purposes only. Such a contract precludes faculty from using such files on the University network for curricular purposes.

In-class performances: You may play legally purchased or owned music within the physical classroom for curricular and teaching purposes.

Lyrics, sheet music and tablature: Use of scores, sheet music, tablature and lyric books almost always require faculty and students to purchase such materials or license them from an approved online repository.

Special edits: If you alter or edit the work, be careful not to change the work’s fundamental character.

Historic sound recordings: Sound recordings that were made prior to February 15, 1972, fall into a special category outside the University’s performance rights license. Please contact the Director of the Copyright and Information Policy Office at cipa@syr.edu, or the Belfer Audio Archive at belfer@syr.edu, if your class requires access to such material.

Bootleg copies: Under no circumstance should faculty members upload any bootleg, gray market, black market, or promotional audio, or clips from such sources, to the University’s courseware management system.

Streaming audio files through Blackboard: For help with streaming audio files through the University’s courseware system, please contact Online Learning Services at http://ols.syr.edu/contact-us/.

(d) Video

1. What Is Included

   » Film (any format)
   » Video (any format)

2. Use Recommendations

   The standard for using video is three minutes or 10% of the total work, whichever is less.
Faculty should consult with the University’s Online Learning Services or Video Production Units for guidance on how to prepare video clips for curricular use on the University’s courseware management system.

3. Special Circumstances

» **Format shifting:** Unlike with music, the University does not maintain a broad performance rights license that covers video use. Additionally, federal laws do not clearly allow individuals or University personnel to copy or digitize commercially released videos, especially when those videos contain an encryption scheme. In 2010, however, the Librarian of Congress, upon recommendation from the Register of Copyright, concluded that consumers may bypass encryption on “lawfully made and acquired . . . motion pictures on DVDs” in order to “incorporate short portions . . . into new works for the purpose of criticism or comment,” when the owner reasonably believes that doing so “is necessary to fulfill the purpose of the use in . . . educational uses by college and university professors.” Please contact Online Learning Services at http://ols.syr.edu/contact-us for further instructions on implementing proper procedures for developing video snippets, and consult the Copyright and Information Policy Adviser for updates on any changes to this policy.

» **Full films:** Should you require that students review an entire film for curricular purposes, the options are: (a) show the film in class; (b) require students to purchase the film; or (c) require students to rent the film.

» **Libraries film collection:** Films that the Libraries own may be checked out for in-class viewing, but faculty should avoid using these films for the purposes of format shifting or creating short film clips.

» **Non-instructional video showings:** You may play videos you have brought or own within the classroom for curricular and teaching purposes. But showing video or film for other purposes—including film festivals not connected to a regularly scheduled class, student film night, or student club movie showings—likely requires payment of a separate performance license fee. For feature films, contact Swank Motion Pictures at http://www.swank.com/college/contact.html or (800) 876-5577. For other films, contact the film distributor.

» **Bootleg copies:** Under no circumstance should you upload any bootleg, gray market, black market, or promotional video, or clips from such sources, to the University’s courseware management system.

» **Streaming video files through Blackboard:** For help with streaming video files through the University’s courseware system, please contact Online Learning Services at http://ols.syr.edu/contact-us/.
Streaming services such as Netflix, Amazon Instant Video, Hulu/HuluPlus, and others are governed by contractual agreements between the streaming service and the subscriber. Those agreements prohibit any use that does not constitute personal use of the streaming services. This includes a prohibition of streaming these services in the classroom and through BlackBoard. You should avoid using Netflix or other streaming video subscription services for academic purposes. If frequent access to such streaming video subscription services is necessary, you should consider requiring students to subscribe to one of the services for the length of the course.

(e) Images and Visual Art

1. What Is Included
   - Illustrations and drawings
   - Paintings
   - Photographs
   - Slides
   - Comic books

2. Use Recommendations

The standards for using visual art are
   - The entire work, IF no more than five copies of artistic or photographic images are used;
   - OR
   - 10% of the collection, or 15 total images, whichever is less, IF the images are in a published collection.

3. Special Circumstances
   - None
(f) Using Blackboard and Other LMS Packages

» Blackboard is the University’s primary learning management system (LMS).
» Faculty members, teaching assistants, and LMS administrators should use Blackboard extensively to manage access to curricular materials.
» Where possible, link to resources from an authorized LMS instead of posting resources on the LMS.

A learning management system (LMS) is a software application that manages, administers, and tracks content and events faculty use in online education context. An LMS also integrates with other important university computer systems, such as registration, and includes functionality that allows faculty to manage and limit content distribution to enrolled students and other authorized parties.

Syracuse University has adopted Blackboard as its primary learning management system, but other systems (such as Westlaw’s TWEN, which is available through the College of Law) qualify as University-authorized LMS packages.

You are strongly encouraged to use a University-authorized LMS as much as possible to link to, store, and manage distribution and use of copyrighted curricular materials.

» These recommendations focus on Blackboard, but apply equally to other LMS packages.

1. Link Instead of Post

Where possible, linking to resources from Blackboard via a URL always is better than posting the content directly on Blackboard. This avoids unnecessary and problematic electronic copying and distribution. Further, linking to the resource from Blackboard limits access to students who are enrolled in the class, avoids having to remove posted articles at the end of each semester, limits the financial and paper costs that may arise through the production of coursepacks, and optimizes the use of resources on which the Libraries spends millions of dollars annually.

2. Post Only Allowable Portions of the Copyrighted Work

If posting is necessary, post only allowable portions. You may perform all or part of a non-dramatic literary or musical work; perform reasonable and limited portions of other types of works; or display any work “in an amount comparable to that which is typically displayed in the course of a live classroom session.” Please note that while you may show an entire audiovisual work (such as a movie) in a face-to-face classroom setting, the TEACH Act may only show reasonable and limited portions of that same audiovisual work to online students. The Recommendations provide options and alternatives.
3. Make the Work Available for a Limited Time

Under the TEACH Act, course administrators, whether they be faculty, teaching assistants, or LMS administrators, must prevent copyrighted works from being retained for longer than the class session. As a result, you may make a copyrighted work available as long as is needed to complete either a single class session, or several class sessions if that work continues to be “an integral part” of each of those class sessions. Blackboard allows course administrators to define time availability options for different types of works, and you should regularly implement these options. Under no circumstances should copyrighted material be made available through Blackboard beyond the date when grades are due to the Registrar.

4. Prevent Dissemination of the Work

Course administrators must use technological measures that reasonably prevent enrolled students and authorized personnel (including assigned teaching assistants and faculty) from distributing protected works to unauthorized recipients who are not enrolled in or officially affiliated with the course. For example, instructors should only post video clips that are delivered as streaming media to prevent the clips from being downloaded by the students. Additionally, instructors should include a warning that further copying or distributing the work may constitute a copyright infringement.

5. Make Works Available Only to Enrolled Students

Blackboard’s integration with the University’s registration system allows password-protected access to enrolled students, select teaching assistants, and faculty. You should strictly enforce these access rules.

6. Do Not Interfere with Existing Copyright Protections

If a protected work uses digital rights management (DRM) or other technological measures to prevent retention or unauthorized further dissemination, the course administrator, teaching assistants, and faculty must not circumvent that protection or engage in conduct that could interfere with those protections. This rule has a limited exception with respect to movies snippets that are used for comment and criticism. For more details about this exception, please see the video recommendations.

7. Do Not Use the Same Work Repeatedly

Both copyright law and recommendations warn against using protected works repeatedly or systematically, whether every semester or every year. Using a work repeatedly means faculty members have sufficient time to obtain the appropriate permissions, or to select and use alternative materials. If your curriculum requires you to use the same material repeatedly, and the University does not license that material (see “Journals Articles” and “Music and Audio,” above), consider arranging with the Bookstore to create a coursepack.
Using protected works for teaching purposes falls into four basic categories: use through a license, use through a statutory limitation, use through the fair use doctrine, and infringing use. Further, there is another category that allows use of a work essentially because that work is not subject to copyright protection.

This section summarizes the basic legal principles that govern use under each of these categories. All of these principles have been incorporated into the previous sections.

(a) Unlimited Uses

As a general rule, you may use works for teaching purposes without limitations in the following circumstances:

1. You own the copyright (not just physical possession of the work);
2. The work is in the public domain; or
3. The work does not qualify for copyright protection.

If any of these circumstances apply, you need not worry about any copyright issues.
(b) Allowable Uses: Licenses

A license is a contract that allows access to information under certain terms and conditions. The license’s terms and conditions will govern who can access the information and what authorized users can do with the information.

Today, license contracts govern access to and use of most electronic information, including journal articles and e-books. (License agreements also govern the creation of printed coursepacks.) The Libraries negotiate and maintain licenses that allow the University community to access and use journals, e-books, and special collections materials. Additionally, the University negotiates and maintains licenses that allow the University community to play music for educational purposes.

The rules for using licensed information for teaching purposes vary according to vendor, medium, and type of information. By and large, however, faculty members can broadly use licensed works for curricular purposes. Specific guidelines for using specific types of media are provided in Chapter 3.

(c) Allowable Uses: Statutory Limitations

Statutory limitations are laws that allow members of the public to use limited portions of a protected work without permission, and possibly without requiring payment of a license fee. Limitations balance the copyright owner’s exclusive rights. A copyright owner generally has five exclusive rights, depending upon the type of work. Those exclusive rights are:

- The right to reproduce (or copy) a protected work;
- The right to create derivative works (or adaptations) based upon a protected work;
- The right to distribute a protected work;
- The right to display a protected work publicly; and
- The right to perform a protected work publicly.

Limitations are also called “exceptions” since they serve as exceptions to one or more of these exclusive rights.

There are two limitations that govern use of protected works for curricular purposes: (a) the performance and display limitation for classroom teaching; and (b) the performance and display limitation for distance and online teaching. The remainder of this section summarizes these limitations and how they affect your use of copyright works.
1. Classroom Teaching Limitation

The classroom teaching limitation allows University faculty members and their students to perform and display protected works in the course of face-to-face teaching within a classroom. Examples of allowable performances and displays within the classroom setting include:

» Playing a film or video;
» Showing photographs or photographic slides;
» Reading passages aloud from a book or journal article;
» Projecting a journal article, photograph, or movie onto a screen or whiteboard;
» Playing recorded music in the classroom;
» Playing live music in the classroom.

You and your students may do any of these or similar activities under the following conditions:

» The activity must occur in a physical classroom, or other space that the University uses regularly for teaching;
» The source material that is being performed or displayed is legally owned or obtained.

The classroom teaching limitation does not allow copying, adapting, or distribution of protected works. Those activities, however, may be allowable under a separate limitation or fair use.

2. Distance and Online Teaching Limitation

The online teaching limitation, which was codified in 2002 legislation commonly known as the TEACH Act, allows educational use of protected works while preserving use restrictions that Congress established in 1998 in the Digital Millennium Copyright Act.

The TEACH Act allows faculty members to use portions of certain types of works for online education. The acceptable uses are:

» Reading non-dramatic literary works such as books, journal articles, novels, or poems;
» Performing non-dramatic musical works;
» Performing limited and reasonable portions of other types of works, including limited portions of movies and screenplays; and
» Displaying works in an amount that is comparable to what would be used inside the classroom.
Faculty members and their students may use protected works in these ways under the following conditions:

» The faculty member orders or supervises the performance or display;
» The faculty member moderates the performance or display;
» The faculty member limits the source material only to those students who are officially enrolled in the class, or teaching assistants;
» The performance or display is an integral part of the class session;
» The performance or display is directly related to the curricular content;
» The source material that is being performed or displayed is legally owned or obtained;
» The source material is not a textbook; and
» The source material is not a work that is produced primarily for use in online education. (In such an instance, the license agreement would govern use of that work.)

Faculty members must meet all conditions to qualify for the online teaching limitation.

(d) Fair Use

The fair use doctrine is a set of criteria that indicate whether the actual or proposed use of a copyrighted work is allowable without first receiving the copyright owner’s permission, or without providing compensation to that copyright owner. While courts have considered and ruled upon the fair use doctrine innumerable times, there is no concrete definition or calculation of what uses—in amount, type, or context—automatically constitute fair uses. Since each fair use situation raises its own facts, no generally applicable definition is possible.

The fair use criteria are outlined in four standards, which Congress codified in Section 107 of the current Copyright Act. Those four standards 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;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.
Although you may decide after assessing the four factors that your use is fair, only a judge, jury, or arbitrator may make a binding determination regarding fair use if a copyright owner decides to enforce his/her rights.

The fair use limitation is available to all faculty members for all types of works in any medium, even if their actual or prospective use of protected works does not qualify for either of the teaching limitations that have been outlined above. The University’s Copyright and Information Policy Adviser will provide additional information about the fair use doctrine and assistance with making fair use determinations in training sessions and individual advisory sessions beyond this Guide.

(e) Infringing Uses

Any use of a protected work that is outside the scope of a statutory limitation and has not been licensed is a copyright infringement and a violation of University policy.
5.

Key Contacts

Copyright and Information Policy Office

Dr. K. Matthew Dames, Esq.
Amy Vanderlyke Dygert, Esq.
Bird 219
http://copyright.syr.edu
cipa@syr.edu; 315-443-5530

Online Learning Services

Michael Morrison
001 Steele Hall
http://ols.syr.edu/contact-us/
ols@ot.syr.edu; (315) 443-2677

Syracuse University Bookstore

Kathleen Bradley
303 University Place
http://bookstore.syr.edu/
textbook@syr.edu; 315-443-9900

Video Production Unit

Donal Little
280 Newhouse II
http://vpu.syr.edu/
315-443-5644
The information in this Guide is designed to guide members of the Syracuse University community in their use of scholarly information and resources and constitutes the University’s position on the use for curricular purposes of works protected by copyright law. As noted above, copyright law is complex; as a result, this Guide may not answer all questions or provide recommendations applicable to every situation that University faculty members, teaching assistants, and online course administrators may encounter. For legal interpretations or advice regarding copyright law, please contact Senior Vice President and General Counsel Dickens Mathieu, Esq. at 443-9732 or dmathieu@syr.edu.

University employees who comply in good faith with the recommendations in this Guide, other applicable University policies, and any legal interpretation or advice rendered by the University’s Office of General Counsel as described above, and who otherwise fulfill the requirements of the University’s Employee Indemnification Policy (http://supolicies.syr.edu/ethics/indem.htm), will be entitled to the protections described in the Employee Indemnification Policy.

Your use of this Guide means you understand and agree to the terms stated above and other University policies that govern its print or online publications.