



## **COPYRIGHT INFORMATION & POLICY**

Federal Statute and SOCHI Guidelines Covering the Fair Use of Multiple Copies of Copyrighted Materials

### **UNRESTRICTED PHOTOCOPYING**

#### **Non-copyrighted Published Works:**

Anyone may reproduce without restriction works that entered the public domain. Any work published in the U.S. before January 1, 1978 without a copyright notice entered the public domain. Copies of works protected by copyright must bear a copyright notice, which consists of the copyright symbol (a letter "c" in a circle, the word "Copyright" or the abbreviation "Copr.") plus the year of first publication for books and the name of the copyright owner. Prior to 01/01/1978, in the case of a book or other printed publication, this notice had to be on the title page or the page immediately following: for periodicals, on the title page, the first page of the text of each separate issue or under the title heading. "Notice" requirements for works published after 01/01/1978 have been relaxed somewhat with respect to both the position of notices and inadvertent omission of these, so there may be limited protection for some works on which notices do not appear. However, in such instances, if you were to innocently infringe a copyright, in a reliance upon an authorized copy from which the copyright notice had been omitted, there would be no liability for actual or statutory damages for any infringing acts committed before receiving actual notice of copyright registration, if it is proved that you were misled by the omission of copyright notice; in such a case, a court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require the infringer to pay the copyright owner a reasonable license fee as a condition of continuation of the infringing undertaking.

#### **Published Works with Expired Copyrights:**



Anyone may reproduce without constraint published works whose copyrights have expired. All U.S. copyrights dated earlier than 75 years ago have expired. Copyrights dated later than that may also have expired because the initial period of copyright protection prior to 1978 is for 28 years if there is no renewal. The work probably will not contain notice of the renewal. We recommend that you either assume the protection is still in effect for copyrights more recent than 75 years old, or ask the owners of them (or the U.S. Copyright Office) whether they are still subject to copyright protection. Usually publishers are either the owners or know the owners' locations. If not, owners may be located through the U.S. Copyright Office in Washington, DC.

### **U.S. Government Publications:**

U.S. Government publications are documents prepared by an officer or employee of the U.S. Government as part of that person's official duties. Government publications include the opinions of courts in legal cases, Congressional Reports on proposed bills, testimony offered at Congressional hearings, and reports of government employees. Works prepared by outside authors on contract to the Government may or may not be protected by copyright. As with other publications, copyright notices may be in the front (for pre-1978 publications) or on the front and back (in works published since 01/01/1978). In the absence of copyright notice in such works, it would be reasonable to assume they are in the public domain.

### **PERMISSIBLE PHOTOCOPYING OF COPYRIGHTED WORKS**

Teachers may reproduce copyrighted works for classroom use and for research without securing permission and without paying royalties when the circumstances amount to what the law calls "Fair Use."

### **"Fair Use" - Current Law:**

In determining whether the use is a "Fair Use" the law requires consideration of the following factors (17 U.S.C. sec. 107):

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.

The Guidelines in this report discuss the boundaries for Fair Use of photocopied material. Fair Use cannot always be expressed in numbers: either the number of pages copied or the numbers of copies distributed. Therefore you should weigh the various factors in the Act to determine whether the intended use of photocopied copyrighted material is within the spirit of the Fair Use doctrine. You should secure permission from the copyright owner unless the intended use is clearly permissible under Fair Use.

### EDUCATORS' GUIDELINES FOR DETERMINING "FAIR USE"

Educators including representatives of higher education have developed, along with publishers, a set of minimum standards of Fair Use. Southern California Health Institute has adopted these minimum standards for all faculty and staff.

Since these standards are often not realistic in an educational setting, the following Guidelines should be used to judge if intended photocopying of copyrighted materials constitutes Fair Use in teaching (and in faculty research) at Southern California Health Institute.

#### **Single Copying for Teachers:**

A single copy may be made of any of the following by or for a teacher at his or individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A chapter from a book;

- An article from a periodical or newspaper;
- A short story, short essay or critique, whether or not from a collective work;
- A chart, graph, diagram, cartoon, or picture from a book, periodical, or newspaper;

### Multiple Copies for Classroom Use:

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 for classroom use or discussion provided that:

- The copying does not substantially exceed the test of brevity as defined below; and
- Meets the Cumulative Effect test as defined below; and
- Each copy includes a notice of copyright.

### Definitions of Terms:

#### Brevity:

- Written Works: Either a complete article, story or essay of less than 2,500 words or an excerpt of not more than 2,500 words from any written work.
- Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue. In some cases, such illustrations are copyrighted individually and cannot be reproduced under Fair Use. (See IV C below)

#### Cumulative Effect:

- The copying of the material is for only one course per class term of the instructor for whom the copies are made.

- Not more than one short article, story, essay or two excerpts may be copied from neither the same author, nor more than three from the same collective work or periodical volume during one class term.
- There shall not be more than nine instances of such multiple copying for one course during one class term.
- The limitations stated in (1) and (2) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

### Prohibitions:

Notwithstanding any of the above, the following shall be prohibited:

There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets, answer sheets, and like consumable materials.

Copying shall not:

- Substitute for the purchase of books, publishers' reprints, or periodicals;
- Be directed by higher authority;
- No charge shall be made to the student beyond the actual cost of the photocopying.

### Situations Not Specifically Covered by SOCHI Guidelines:

The doctrine of "Fair Use" may permit reproduction of copyrighted works in excess of the word limit restriction specified in the SOCHI Copying Copyrighted Materials Guidelines.

Since this is an area of unclear legal definition, you should use caution and discretion in such copying and should seek advice from the Campus Director, or request prior



written permission directly from the copyright owner to perform copying substantially the limits enumerated in the Guidelines.

Any questions regarding the application of the Guidelines regarding whether a work is covered under federal copyright protection, or regarding the ways to secure permission from publishers should be referred to the Campus Director.

## **COPYRIGHT REQUIRING PRIOR WRITTEN PERMISSION FROM THE COPYRIGHT OWNER**

### **Copying Copyrighted Materials for Profit:**

"Fair Use" extends only to nonprofit copying. Teachers should not charge students more than the actual cost of photocopying, and should not make copies for students who are not in their classes without obtaining permission. This applies to classroom copies made and distributed by a commercial copy center outside the school, as well as SOCHI facilities.

### **Copying Copyrighted Unpublished Works:**

One should obtain permission from owners of unpublished works in order to copy from them. The law gives automatic copyright protection to unpublished works from the time they are created until they are published. Unpublished works, such as theses and dissertations, may be protected by copyright. If such a work was created before January 1, 1978 and was not copyrighted, the work is protected under the new Act for the life of the author plus fifty years after or until December 31, 2002, whichever shall later occur (17 U.S.C. Section 303). Works created after January 1, 1978 and not published enjoy copyright protection for the life of the author plus fifty years (17 U.S.C. Section 302).

### **Copying Copyrighted Special Works:**

In some cases, certain specialized materials such as maps, anatomical diagrams, and drawings are copyrighted separately even though they appear in a text book or other printed work. In this situation, the reproduction of the material would not constitute



Fair Use even if only one illustration from a book were used (see II B. 3. a) (3) above). You must obtain permission to reproduce such individually copyrighted materials.

### **Copying Copyrighted Consumable Works:**

Teachers must secure prior written permission before making multiple copies of copyrighted works which are intended to be consumed in classroom activities such as workbooks, exercises, and standardized tests and their answers.

### **COPYRIGHT INFRINGEMENT - PENALTIES**

Owners of copyrights can attempt to halt infringement by suing for injunctions, impounding or destruction of infringing articles, and can seek costs of suit and attorneys' fees. Additionally, they can seek recoup actual money damages suffered by the copyright owner as well as the infringer's profits. When there are only nominal monetary losses, owners can, instead of seeking their actual damages, claim "statutory" damages up to \$10,000 (or up to \$50,000 if the infringement was "willful"). Adhering to the Guidelines in III and IV above should afford reasonable grounds for believing one is engaging in "Fair Use".

The purpose of these guidelines is to state the minimum standards of educational Fair Use under Section 107 of H.R. 2223. Be aware that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of Fair Use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of Fair Use.

