



BOISE STATE UNIVERSITY

University Policy 1130

Use of Copyrighted Works

Effective Date

June 2015

Responsible Party

Provost and Vice President for Academic Affairs, (208) 426-1212

Albertson's Library Administration, (208) 426-1234

Scope and Audience

This policy applies to all faculty, staff, and students

Additional Authority

Title 17 United States Code, the Federal Copyright Act (the Copyright Act), §102-112

1. Policy Purpose

To provide guidance regarding the permissible use of others' copyrighted works.

2. Policy Statement

Boise State University is committed to providing education to students; research, scholarly inquiry, and creative endeavors; and bringing intellectual resources to the citizenry. The university is also committed to respecting the rights of copyright owners and complying with copyright law. The University recognizes that the exclusive rights of copyright owners are balanced by limitations on those rights under federal copyright law, including the right to make a fair use of copyrighted materials and the right to perform or display works in the course of face-to-face teaching activities.

3. Definitions

3.1 Copyright Law

A set of laws that gives owners rights to their works and therefore protects the works from certain uses by others. In the United States, copyright law is outlined in the Copyright Act.

3.2 Copyright Protection

Legal protection that covers both published and unpublished works, regardless of the nationality or domicile of the creator. An owner does not have to register a work or display a copyright notice for the work to be covered by copyright protection.

3.3 Public Domain

Comprises all works that are either no longer protected by copyright or never were. Public Domain materials generally fall into one of four categories:

- a. Generic information such as facts, numbers, and ideas;
- b. Works whose copyrights have expired, discussed further in Subsection 4.1.4;
- c. Works created by the U.S. federal government; and
- d. Works expressly dedicated or donated to the public domain.

4. Responsibilities and Procedures

4.1 Copyright Law

Much of the information in this section is drawn from publications by the U.S. Copyright Office, which can be accessed at www.copyright.gov and the Copyright Act.

4.1.2 Protected Original Works under the Copyright Act

The Copyright Act protects original works including:

- a. Literary works, including computer programs and software;
- b. Musical works;

- c. Dramatic works;
- d. Choreographic works;
- e. Pictorial, graphic, and sculptural works;
- f. Audiovisual works;
- g. Sound recordings; and
- h. Architectural works.

Original works also include electronic and digital works and works embedded in websites.

4.1.3 Owner Rights Under the Copyright Act

Subject to the limitations discussed in Section 4.2 Fair Use, below, the Copyright Act grants exclusive rights to the owner of a copyright, thus allowing only the owner to:

- a. Reproduce the work, which includes photocopying, scanning, printing from a computer, saving to one's computer from the internet, and posting the work on a website;
- b. Create derivative works;
- c. Distribute copies of the work, which includes electronic distribution such as forwarding an email;
- d. Publicly perform the work;
- e. Publicly display the work, which includes electronic display; and
- f. Digitally transmit the work.

4.1.4 General Guidelines

- a. One should assume all works of others are protected by copyright, unless it is known to be in the Public Domain.
- b. The Public Domain should not be confused with the fact that a work is publicly available (such as information in books or periodicals, or content on the Internet).
- c. It is unlawful for anyone to violate any of the rights provided by copyright law to the owner of a copyright. Do not assume it is legal to reproduce a work simply because you can or

because you consider your use ‘educational’. Acknowledging the source of the copyrighted material is not a substitute for being allowed to use the work, such as through fair use or by receiving permission from the copyright owner.

4.1.5 Duration of Copyright

The term of copyright protection depends upon the date of creation. When the copyright expires, the work passes into the public domain.

- a. A work created on or after January 1, 1978, is ordinarily protected by copyright from the moment of its creation until 70 years after the creator’s death.
- b. For works made for hire, anonymous works, and pseudonymous works (unless the creator’s identity is revealed in Copyright Office records), the duration of copyright is 95 years from publication or 120 years from creation, whichever is shorter.
- c. The rules for works created, published, or registered before January 1, 1978 are more complicated and can be found at www.copyright.gov

4.1.6 Registration and Notification

The way in which copyright protection is secured is frequently misunderstood. Copyright is secured automatically when the work is created and fixed in a tangible form, such as the first time it is written or recorded. No other action is required to secure copyright protection – neither publication, registration nor other action in the Copyright Office. Formal registration of one’s copyright can be helpful in certain circumstances but is not required.

4.2 Fair Use

As a limitation to the owner’s exclusive rights, the limited “fair use” of a copyrighted work for purposes such as criticism, parody, comment, news reporting, teaching, scholarship, or research is permissible.

4.2.1 Fair Use Factors

- a. Whether the use or reproduction of a copyrighted work is “fair use” is based on several factors, including:
 - (i.) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

- (ii.) The nature of the copyrighted work;
 - (iii.) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (iv.) The effect of the use upon the potential market for, or value of, the copyrighted work.
- b. Additionally, whether the use of a copyrighted work is transformative or used in new and creative ways may be a consideration when deciding Fair Use.

4.2.2 Determining Fair Use

- a. The distinction between what is fair use and what is infringement in a particular case is not always clear or easily defined. The determination of whether a specific use is fair should be made by evaluating all four Fair Use factors as a whole. No one factor outweighs another; thus, each factor should be weighed equally.
- b. When conducting a Fair Use analysis, each use or instance of a copyrighted work should be individually evaluated. It is not enough to make general statements about all uses of copyrighted works within a single creation. Additionally, there is no specific number of words, lines, or notes that may safely be taken without permission. However, examples of activities courts have regarded as Fair Use include:
- (i.) Quotation of short passages in a scholarly or technical work for illustration or clarification of the creator's observations;
 - (ii.) Spontaneous and unexpected reproduction of material for classroom use—for example, where an article in the morning's paper is directly relevant to that day's class topic;
 - (iii.) A parody that includes short portions of a work; and
 - (iv.) A summary of an address or article, which may include quotations of short passages of the copyright-protected work.
- c. Any fair use analysis must be conducted by the faculty member (or other user) on a case-by-case basis, considering all four factors and the circumstances of the situation at hand. It is important to retain documentation of such analysis. Remaining questions about whether use of a work constitutes fair use should be directed to the Office of General Counsel.

4.2.3 Specific Academic Use

- a. Not all uses in an academic context are considered fair use. Specifically, no copying of or from works intended to be “consumable” in the course of study or of teaching, such as workbooks, is permissible.
- b. Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. In the courts, such photocopying is more likely to be considered as a substitute for purchase of a book and thus, less likely to be deemed fair use.
- c. In addition, many licenses to use works, such as those granted through the library’s databases, are more restrictive than fair use might be.

4.2.3A Copying for Music Education Purposes

- a. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course, is permissible.
- b. For teaching purposes, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a performable unit, and that the excerpts do not constitute more than ten percent of the whole work. The number of copies, as with prose works, shall not exceed one copy per student.
- c. Printed copies of a work which has been purchased may be edited or simplified, provided the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
- d. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes, and may be retained by the university or individual instructor.
- e. A single copy of a sound recording to be made from recordings owned by the university or individual instructor for the purpose of constructing aural exercises or examinations may be retained by the university or individual instructor.

4.2.3B Copying From Computer Programs

It is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of the computer program provided:

- a. Such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
- b. Such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

4.3 Library

4.3.1 Copying for Archive Purposes

- a. A single copy of an unpublished work may be made for purposes of preservation and security or for deposit for research use in another library or archives if the copy is currently in the collection of the library or archives.
- b. A single copy may be made of a published work for the sole purpose of replacement of a damaged, deteriorating, lost or stolen copy if an unused replacement cannot reasonably be obtained at a fair price.

4.3.2 Copying from Library Resources

- a. A single copy may be made from a library collection or archives of no more than one article or other contribution to such collection or periodical issue if:
 - (i.) The copy becomes the property of the user and the library or archives has no notices that the use would be for other than private study or research; and
 - (ii.) The library or archives prominently displays a warning of copyright protection at the place where copying orders are accepted.
- b. The library or archives will not engage in concerted reproduction or distribution of multiple copies of the same material nor in the systematic reproduction or distribution of single or multiple copies except for appropriate inter-library loan arrangements.

4.3.3 Institutional Repository Services

In compliance with agreements authors make with their selected publishers, the library posts an authorized version of a faculty member's work in the university's institutional repository.

4.3.4 Licensed Databases

- a. Databases and subscriptions provided by Albertsons Library are intended for non-commercial, educational, or personal research purposes only. Commercial use of licensed materials is prohibited.
- b. When using licensed electronic resources, users must:
 - (i.) Read and comply with license terms associated with specific resources (note: in many cases, license agreements may permit less use than a fair use analysis might allow);
 - (ii.) Limit uses to non-commercial, educational, or personal research purposes;
 - (iii.) Not facilitate unauthorized access by others;
 - (iv.) Not engage in systematic downloading of licensed content;
 - (v.) Not distribute copies of material to individuals or groups outside the Boise State University community, unless the license for the resource specifically allows it;
 - (vi.) Give proper attribution when using material reproduced from licensed electronic resources.
- c. Many licenses prohibit the downloading and posting of licensed content on another server. In general, it is preferable to use persistent links to the electronic articles rather than to download and store articles on servers.
- d. Except as otherwise provided above, copying by the library or from the library's resources, whether in print or electronic, must comply with fair use.

4.3 Distance Education

The Copyright Act exempts from copyright protection the digital transmission of certain works in the context of online courses in an amount comparable to that which is typically displayed in the course of a live classroom session. The following conditions must be met for an exemption to apply:

- a. The display must be made:
 - (i.) By, at the direction of, or under the supervision of the instructor;

- (ii.) As an integral part of a class session offered as a regular part of systematic mediated instructional activity;
 - (iii.) Directly related and of material assistance to the teaching content; and
 - (iv.) For and technologically limited to students enrolled in the class.
- b. Boise State must:
- (i.) Have policies and provide information about, and give notice that the materials used may be protected by copyright;
 - (ii.) Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them; and
 - (iii.) Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

4.4 Permission

- a. If the work is protected by copyright law, is not in the public domain, and does not meet the criteria for fair use or another specific exception in the copyright law, one must obtain permission from the copyright owner or its agent in order to reproduce or reuse the work.
- b. Some works may contain materials—text, images, and graphics—from multiple copyright owners and may require separate permission from each owner.
- c. Even if an employee creates his or her own work, he or she may not have the right to reproduce and distribute it. If the work was prepared as part of an employee's duties at Boise State, it may be covered by the work-for-hire provision in the Copyright Act. In this case, ownership of the materials may belong to Boise State, in which case specific permission to reproduce these materials may have to be obtained from the University. For more information, see the Boise State University Intellectual Property Policy #1090.
- d. There are two primary options for obtaining copyright permission once the need is identified. One may either contact the copyright owner directly or use a licensing agent.
- e. For most print and online publications, the publisher is often a copyright owner capable of providing permission. If the copyright owner cannot be identified, one can request a search by the U.S. Copyright Office. The Copyright Office can search only those works that have been registered. However, not all works are registered because registration is not a

requirement for copyright protection. Publisher and author trade associations as well as online search engines are helpful resources for locating copyright owners. If a copyright owner is deceased, contact the executor of the owner's estate.

- f. Lack of a response from the copyright owner does not convey permission.

4.5 Infringement

Under the Copyright Act, anyone who violates the exclusive rights of a copyright owner is an infringer of the copyright, subject to the limitations as discussed above. The University itself, or any University employee, may be an infringer and subject to the Copyright Act.

4.6 Penalties

- a. If the copyright holder has registered the work with the U.S. Copyright Office prior to the infringement, the copyright holder may sue an infringer for compensation. Court-ordered compensation may include damages such as lost profits from the infringing activity or statutory damages ranging from \$250 to \$150,000, plus attorneys' fees, for each infringing copy. Even higher damages may be awarded if the court feels that the infringement was committed "willfully."
- b. An infringing employee may also be criminally liable if they willfully copy a work for profit or financial gain, or if the copied work has a value of more than \$1,000. In these cases, penalties can include a one-year jail sentence plus fines. If the value is more than \$2,500, the employee may be sentenced to five years in jail plus fines. Criminal penalties generally apply to large-scale commercial piracy.

Revision History