



## Member User Copyright Agreement

Please read in full and click below to agree to the terms of use for the Catalyst Kitchens Resource Library.

### GUIDELINES:

Set forth below are rights and responsibilities regarding copyright of materials created by member organizations and shared through the Catalyst Kitchens Network.

### GENERAL RULE:

Catalyst Kitchens takes the stance that any use of materials distributed by the network that further any member's training program, social services, or the operation of their teaching kitchens and social enterprises (where students receive on-the-job training) is all covered under "Fair Use" as outlined below. Though not covered as explicitly under the outlined policy and reference laws below, Catalyst Kitchens considers its members who operate as social purpose corporations, benefit corporations, L3C's, or Low-profit LLC's to also be covered by this fair use when utilizing resources provided by the network and its members through the resource library or other network activities.

Significant portions of this policy are derived from *Complete Copyright: An Everyday Guide for Librarians*, by Carrie Russell, Creative Deed License 2004, American Library Association. This use is subject to the following: original credit to the author, non commercial use, and sharing based on these same conditions.

#### 1. Copyright Basics

The founding fathers believed that authors and inventors would be more likely to create new works if they were given an incentive. Congress established a set of exclusive rights that gave copyright holders the sole right to reproduce and market their works to the public for "limited times." During the term of copyright, copyright holders would have no competitors in the market for their particular copyrighted works. Initially, the exclusive rights pertained only to the rights of reproduction and distribution, but over the years, Congress has created additional rights. Copyright law is found in Title 17 of the United States Code.

The owner of copyright, under this title, has exclusive rights to do and to authorize any of the following:

- a. to reproduce the copyrighted work in copies or phonograph records;
- b. to prepare derivative works based upon the copyrighted work;
- c. to distribute copies of phonograph records of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- d. in the case of literary, musical, dramatic, choreographic works, pantomimes, motion pictures, and other audiovisual works, to perform the copyrighted work publicly;
- e. in the case of literary, musical, dramatic, choreographic works, pantomimes, pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

- f. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

If a person other than the copyright holder uses one of the exclusive rights without the authorization of the copyright holder, that person has infringed copyright (unless an exemption applies).

Once an expression is fixed in a tangible medium, it is afforded copyright protection immediately. A doodle made during a staff meeting, a webpage published on the World Wide Web, and the video one makes of a friend's wedding are all equally copyrighted. In the past, to gain copyright protection for a work, the work had to be registered with the U.S. Copyright Office and/or contain a copyright notice (© 1999 Joe Creative) on the published work. The Berne Convention Implementation Act of 1988 (which went into effect on March 1, 1989) amended the Copyright Act of 1976 by eliminating the registration and notice requirement.

Since copyright is automatic, copyright is the rule rather than the exception. The creator or author must do something in order not to have copyright protection. She can put notice on her work saying, "This material is not protected by copyright" or "I assert as the creator of this work that this work be recognized as public domain material." If the creator does not take action to the contrary, all works she creates are automatically protected. Thus, materials are copyright protected, instantly.

## 2. Duration of Copyright

The copyright term has been extended many times throughout the history of copyright law, and the rules for copyright registration, renewal, and notice have also been amended numerous times. As a result, it can be very difficult to determine whether materials are protected by copyright. To complicate matters, additional modifications of the law have affected the term of unpublished materials. Furthermore, materials published outside the United States may be treated differently than U.S. publications. Consequently, one needs a copyright duration reference guide such as the one found in Exhibit A at the end of this section on copyright.

## 3. Exceptions to Copyright Protection

### a. Non-copyrightable work

Copyright does not protect ideas, but it does protect expression. The idea of a story – "boy meets girl" – cannot be protected by copyright, but a "boy meets girl" story expressed in an original way can be protected.

Works that are obvious in their nature, such as the 12-month Julian calendar, cannot be protected by copyright. However, other parts of the calendar, such as original art or photography, may be protected by copyright.

Copyright law does not protect facts, but it does protect the original and creative selection and arrangement of facts. For example, a bibliography is a list of citations that cannot be protected. An annotated bibliography is copyright protected (not the list of citations but the original and creative annotations). On the other hand, a non-annotated bibliography might arguably qualify for copyright protection based on the originality of the selection of citations. Likewise, a bibliography arranged in a novel and creative way might also qualify.



Current copyright law protects only those elements of databases that contain originality and creativity in selection, coordination, or arrangement. Copyright protection for databases is often considered minimal since databases frequently are composed almost entirely of public domain materials. These types of works of authorship are sometimes said to have “thin” copyright protection.

Since existing copyright law protects an original selection, arrangement, and coordination of facts in databases, librarians and other public interest groups have argued that additional copyright protection is not necessary. If database producers could also copyright the facts that reside within a database, basic tenets of copyright law would be challenged:

- i. Originality is a constitutional requirement for copyright protection.
- ii. Copyright only protects expression and not ideas.
- iii. Copyright’s purpose to advance learning demands that ideas and information presented by others be built upon to create new works.
- iv. Once materials fall into the public domain, they cannot be copyright protected.

b. Public Domain

The public domain is information, knowledge, discoveries, and artistic creation never or no longer protected by copyright. Most of us know that facts, for example, are automatically part of the public domain, because facts cannot be copyrighted. The copyright law (§ 102) goes on to say that “in no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery.” Thus, while a particular process a person may have designed for shelving books in his library cannot be protected by copyright, a description, explanation, or illustration of the process could be protected by copyright.

In addition, works of the U.S. government produced by government employees are in the public domain. This category includes works that are created by all agencies of the federal government, such as the Internal Revenue Service, federal legislation, the president’s speeches, and court rulings.

Works created by state governments and their employees may or may not be in the public domain.

Once materials are in the public domain, anyone can exercise a right of copyright without the prior permission of the copyright holder. For example, publishing a work from the public domain is not violation of copyright. In fact, the re-publication of such a work can generate new revenue, not for the original copyright holder, but for whoever publishes and markets it.

c. Fair Use

Fair use is limited use without signing a license, and without paying a fee. It not only allows but also encourages socially beneficial uses of copyrighted works such as teaching, learning, and scholarship. There is never an immediate answer to the question, “Is this a fair use?” One must make a fair use determination based on sound judgment and the careful consideration of the



situation at hand and that determination may take some time. Those who prefer a “yes” or “no” answer may be troubled by the ambiguous nature of fair use, but fair use cannot be reduced to a checklist. Fair use requires people to think.

But at least the fair use section of the copyright law is short and easy to read:

Sec.107. Limitations on exclusive rights: Fair use notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonograph records or by any other means specified by 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 fair use, the factors to be considered shall be:

- 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.
- iv. the effect of the use upon the potential market for or value of the copyrighted work.

d. The TEACH Act

Before the TEACH Act was passed in 2002, section 110 did not address transmitting digital materials to students in distance education situations. Unlike fair use, the TEACH amendment is more of a checklist – one is allowed to do this and that, but you have to follow these particular conditions. The TEACH Act allows copyrighted works in digital formats to be digitally transmitted to students in the classroom or in distance learning environments without prior permission from the copyright holder. But make no mistake; the exemptions addressing the use of digital materials in the classroom are limited in scope. In particular, educational institutions must meet specific requirements before the exemption can be used.

e. Public Displays and Performances in the Classroom

In the face to face teaching situation (physical classroom or other place devoted to instruction), instructors and pupils at non-profit educational institutions may display analog works protected by copyright holder. For audiovisual works, like videotapes, the copy used must be a lawful copy. But, as you know by now, copyright has to be confusing most of the time. When transmitting material via digital networks, the rules for the display and performance of copyrighted works to the classroom are more complex and detailed in nature.

4. Additional Rules for Digital Works and Digital Transmission of Works Protected by Copyright

- a. All materials used for display and performance in the classroom must be works that were lawfully made and acquired, or at least one should have every reason to believe that the copies are lawful copies.



- b. Teaching must occur at an accredited, non-profit educational institution. Accreditation for K-12 schools is recognition by the applicable state certification or licensing board. For higher education, the college or university must be approved by a regional or national accrediting agency recognized by the Council on Higher Education and Accreditation or the U.S. Department of Education.
- c. The use of the copyrighted resources must be within the confines of “mediated instructional activities” – integral to the course, under the direction of the course instructor, and analogous to the kinds of performances or displays one would expect in a physical classroom.
- d. The use of dramatic literary works – those works with a dramatic element like an opera or play – and any other work (including audiovisual works) is limited to smaller, discrete portions of the work unless performing or displaying the entire work is essential to the course. For example, an instructor teaching the course “Films of John Ford” probably needs to show one or more John Ford Films in their entirety to meet course goals. In the rare instance where it is necessary to transmit a digital copy of a film via a computer network to students in remote locations, TEACH could also apply, but only if the digital copy is necessary to meet pedagogical goals. The digital transmission is made for enrolled students only and to the extent technologically feasible, limited to enroll students.

To use these exemptions, educational institutions must also have in place copyright policies and copyright educational resources that promote lawful use of copyrighted works and that are readily available to instructors, staff, and students. In addition, students should be alerted to the fact that copyrighted works used in courses may be protected by copyright. Labeling works as protected by copyright and including the notice of copyright whenever possible is more important when works are in digital formats. Furthermore, the educational institution that transmits digital works must use technological protection measure (passwords, watermarking, encryption) that reasonably prevent:

- i. retention of the work in accessible form for any time longer than the class session.
- ii. unauthorized further dissemination of the work to others.
- iii. activities that would decrypt or otherwise interfere with technological measures already employed by the copyright holder to prevent retention or unauthorized distribution of the work.

Digital materials are more vulnerable to copyright infringement because of the ease of reproduction and broad distribution. With TEACH, Congress said digital works should be more tightly controlled. To achieve this end, educational institutions are required to make a concerted effort to prevent infringements in two ways – by educating the educational community about copyright law and by using technology to limit the possibility of infringement.

## 5. Effectiveness of Technological Controls Required by TEACH

Arguably, the most difficult aspect of interpreting the TEACH Act is the technological requirements expected of institutions who want to exercise the TEACH exemptions. Congress used the “reasonable



measures” language as an acknowledgement that educators’ judgment and our demonstration of good faith will come into play when educators implement protection technologies. The institution should take reasonable measures to protect copyrighted works as best as possible, given existing technology, its availability, and the technological capabilities of the individual school, college, or university.

Fair use is always an alternative option for educational institutions. Teachers and students can use digital materials for teaching if the use is a fair use. In fact, before the TEACH amendment, many educational institutions exercised fair use when using digital materials for educational purposes. As far as can be determined, none of these actions led to litigation. If the use of digital material is fair, the institution is not infringing. Note that with fair use, the institution is not required by law to meet the technological requirements outlined in section 110.

#### 6. The TEACH Act and Reserves

The legislative history for the TEACH Act makes clear that exemptions to public performance and public display of resources outlined in section 110 do not apply to reserves. This makes sense if one considers that rarely would an instructor publicly display a journal article for classroom purposes. Students do not read their materials during the class period. It is more likely that a portion of a resource (like a graph or illustrative model) may be displayed in the classroom. Public performance applies only to works that are publicly performed (recitation, theatrical production, choreography) or that are shown or heard by means of a playback device (videos, motion pictures, sound recordings). Public displays are for work “on display” as in works that would be displayed in an art gallery.

#### 7. Digital Millennium Copyright Act (DMCA) of 1998

The DMCA is the principal amendment that attempts to update the copyright law for the digital environment. This law remains unsettled and controversial. The DMCA:

- a. provides some protection to online service providers from liability for online infringement if certain conditions are true and particular rules are followed;
- b. allows libraries and archives to make up three reproductions for replacement or preservation purposes under certain conditions;
- c. gives copyright holders the right to control or deny access to digital works protected by copyright;
- d. makes the circumvention of technology used to protect copyrighted materials a civil and criminal offense;
- e. prohibits the manufacture, provision, importation of, and trafficking of anti-circumvention and anti-copying devices or software;
- f. prohibits tampering with copyright management information;
- g. maintains that rights, remedies, limitations, or defenses to copyright infringement, including fair use, are not affected regardless of new prohibitions on anti-circumvention technologies (although fair use is not a defense to the criminal act of circumvention);



- h. establishes that an ongoing, administrative rule-making proceeding be held to evaluate the impact of the anti-circumvention provisions on non-infringing uses of copyrighted works;
- i. directs the U.S. Copyright Office and the National Telecommunications and Information Administration of the Department of Commerce (NTIA) to produce a joint report on first sale and computer software exemptions and how encryption research may be affected by DMCA; and
- j. directs the U.S. Copyright Office to hold public hearings and make recommendations regarding distance education.

The user agrees that any materials, resources, and other information accessed through this resource library is the property of the original author, and will be used by the user and their member program only for the allowed purposes as laid out in this document.