

Copyright Infringement Policy

The New York Conservatory of Dramatic Arts (NYCDA) recognizes its obligation to educate its students, faculty and staff on the nature of copyright law, their obligations and responsibilities regarding the use of copyrighted materials and the consequences for the unauthorized use of copyrighted work.

NYCDA is committed to adhere to the provisions of the *United States Copyright Law* (Title 17, [United States Code](#), Sect. 101, et seq.) and further recognizes its duty to establish policies and sanctions governing the use of copyrighted materials available through the conservatory network, on the Internet and via file sharing as set forth in The Digital Millennium Copyright Act of 1998.

Copyright

Copyright is the exclusive legal protection afforded to authors of creative intellectual works, in whatever medium, for a limited period of time. This protection prohibits others from using the works without permission or profiting from the sale or performance of the works for a fixed period of time.

The length of copyright protection is governed by very complex rules. Author's rights begin automatically when a work is created and, generally speaking, end 70 years after the author's death. Copyright protects *original works of authorship* that are *fixed in any tangible medium of expression*. A vast array of creative expressions, including: writings, musical works, plays, pantomimes, choreography, artwork, photography, sculpture, architecture, motion pictures, audiovisual works, sound recordings, web pages, and computer programs are now copyrightable. Almost all works created after 1978, even those without mention of copyright are protected.

This protection is primarily defined by *United States Copyright Law*, which gives authors exclusive rights to authorize others to:

- make copies of the work
- sell or otherwise distribute copies of the work
- prepare new works based on the original work or
- perform the work (such as a stage play or painting) in public.

Copyright Limitations

The rights of copyright owners are not, however, unlimited. Under certain circumstances portions of works intended for non-profit, educational, or commercial purposes may be used provided those uses stay within certain bounds. There are no explicit rules, but certain guidelines, known as the *Doctrine of Fair Use*, do exist to help determine what those boundaries are. *Section 107 of the U.S. Copyright Law* notes four factors that may be taken into account when attempting to determine Fair Use.

- *Purpose and character of the use* — i.e. commercial, nonprofit, educational. Several specific purposes do fall under Fair Use: criticism, comment, news reporting, teaching, scholarship, or research.
- *Nature of the work* — creative and informational. Copies of art, music, poetry, film or a newspaper or magazine article may be considered Fair Use, whereas copies of a musical score

- or short story may not. Duplication of material originally developed specifically for classroom use is less likely to be seen as Fair Use than material originally developed for the public.
- *Amount and substantiality of the portion used* — That is, the amount of material used in relation to the work as a whole. The larger the portion of a copyrighted work used, the less likely it is that it will be considered Fair Use.
 - *Effect of the use upon the potential market* — If the use deprives the copyright owner of income or undermines a potential new market it is not considered Fair Use.

Copyright Infringement

Copying, distributing, downloading or uploading, copyrighted material, e.g. documents, books, programs, music, movies, videos, text, etc., without permission from the rightful owner violates the *United States Copyright Act*. Copying digital copyrighted material, such as third-party software, without the express written permission of the owner of the license, is illegal and a violation of the copyright owner's rights.

Complying With Copyright Law

Single Copies

The limit within which a single copy may be made for academic needs is defined below. It is possible that more extensive copying may be sanctioned under the *Doctrine of Fair Use*, but as a rule of thumb, these guidelines for making a single copy are certain to comply with copyright law. Anyone may copy

- One chapter from a book.
- One article from a journal issue or newspaper.
- Multiple excerpts from a single book or journal issue only if the total length of the material is 10% or less of the complete work.
- One short story, short essay, or short poem.
- One chart, diagram, drawing, graph, cartoon, or picture.

Multiple Copies

Multiple copies may be made for classroom use, but must meet the following tests for *brevity*, *spontaneity* and *cumulative effect* to be considered Fair Use. All copied materials must also include a prominent notice stating that the material is copyrighted.

Brevity

- Prose — A complete article, story or essay of 2,500 words or less, an excerpt of any prose work of 1,000 words or less or 10% of the complete work, whichever is less
- Poetry — A complete poem of 250 words or less (if printed on less than two pages) or an excerpt of a poem of 250 words or less

(The numerical limits above allow permission to complete an unfinished paragraph of prose or a line of a poem.)

- Illustration — One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue

- Special Works— Certain works which contain text and illustrations (a children's book for instance), and are less than 2,500 words may be reproduced only in part. i.e. An excerpt of no more than two published pages or 10 % of the work, whichever is less.

Spontaneity

The concept of *spontaneity* means that, the *desire* of an instructor to use copyrighted work and the *need* of the instructor to copy/use that material are so close in time that it would be unreasonable to expect the copyright holder to reply to the instructor's request for permission in a timely fashion. The expectation under Fair Use is that permission to use the material will be obtained as soon as is reasonably feasible. Fair Use does not sanction continued use of the copied material over an extended period such as multiple semesters.

Cumulative Effect

Cumulative effect holds that an action (copying copyrighted material) considered in isolation may appear to have minimal effect, but overall the effect may become substantial. Thus to ensure Fair Use an instructor may

- make copies of material for one course only and may make only one copy of that material for each student in the course.
- may make copies of only one short poem, article, story, essay or two excerpts from a single author or no more than three works from the same collective work or periodical volume cumulatively during a single term
- have no more than nine instances of such multiple copying for one course during a single term

Course Packets

Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center (www.copyright.com). *Anthologies* such as these, created by faculty for a course are perceived by the courts in Fair Use cases as an attempt to substitute for textbooks, and as such, reduce the potential market for copyrighted publications. Further, each item included in the packet must also include a copyright notice — e.g., "Copyright 1990 by Academic Books, Inc."

Classroom Use of Audiovisual Materials — Films and Video

Copyright owners have the exclusive right to display and perform their works, including the projection of a film or videotape. However, educators may show films or video-tapes without explicit permission from the copyright owner if the showings are for educational purposes and are in accordance with congressional guidelines. The film or video must be directly related to the instruction and shown in the course of face-to-face teaching activities in a nonprofit educational institution. In addition, the film or video must be a legally acquired or legally duplicated copy of the work.

In order to know which uses of audiovisual materials are permitted and prohibited by the Copyright Act, educators need to understand two key terms: *performance* and *display*. Under Section 101 of the Copyright Act in the case of a motion picture or other audiovisual work, these terms are defined as follows:

- To *display* a work means to show individual images non-sequentially.
- To *perform* a work means to show its images in sequence or to make the sounds accompanying it audible.

For example, in lay terms, one *displays* pictures of audio-visual frames of a film or videotape, whereas one *performs* an audiovisual work by running all or part of it through the projector or player. The display or performance of audiovisual works in non-profit institutions is permissible, provided the following conditions are met. They must be shown

- as part of the instructional program.
- by students, instructors, or guest lecturers.
- either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium or auditorium if it is used for instruction.
- either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
- only to students and educators.
- using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

Educational Multimedia Fair Use

[Educational Multimedia Fair Use Guidelines](#) specify what quantity of copyright-protected material may be included in multimedia products prepared by students or faculty for course-related work. Use of larger portions requires permission from copyright owners.

Creators of multimedia products may prepare a total of three copies, one of which is for preservation and replacement purposes only. One copy may be placed on Library Reserve and one copy may be retained by the principal creator(s) in the case of joint projects

Fair Use status expires two years after the first instructional use of a particular multimedia product. After two years, permission must be obtained before using the project again.

Guidelines

The following guidelines provide guidance for the use, *without permission*, of portions of *lawfully* acquired copyrighted works. They apply only to educational multimedia projects that incorporate educators' original material, such as course notes or commentary, together with various copyrighted media formats, including motion media, music, text, and graphics.

The guidelines are voluntary and do not have the force of law, but they are safe minimums that, if followed, should constitute Fair Use. Any newly created work that includes copyrighted material may

only be used for learning activities. Other uses, such as selling the work commercially, require permission.

Student Guidelines

- Students may incorporate portions of copyrighted materials when producing a project for a specific course.
- Students may perform and display their own projects and use them in their portfolio or use the project for job interviews or as supporting materials for application to graduate school.

Faculty Guidelines

- Faculty may include portions of copyrighted works when producing their own multimedia project for their teaching in support of curriculum-based instructional activities at educational institutions.
- Faculty may use their project for
 - assignments for student self-study
 - remote instruction, provided the network is secure and is designed to prevent unlawful copying
 - conferences, presentations or workshops
 - their professional portfolio

Copyrighted Media Use

- Motion media:
 - three minutes or up to 10 % of the complete work, whichever is less
- Text:
 - 1,000 words or up to 10 % of the complete work, whichever is less
 - An entire poem of less than 250 words may be used, but no more than three poems by one poet or five poems by different authors in an anthology.
 - For poems exceeding 250 words, 250 words may be used, but no more than three excerpts from one poet or five excerpts from different poets in the same work
- Music, lyrics, and music video:
 - no more than 30 seconds of music or lyrics from an individual musical work or up to 10% of the complete work.
- Illustrations or photographs:
 - no more than five images from one artist or photographer.
 - 15 images from a collection or no more than 10% of it, whichever is less.
- Numerical data sets:
 - 2,500 fields or cell entries or up to 10 % from a copyrighted database or data table, whichever is less.

Permission

Permission must be obtained when a project is intended

- for commercial or non-educational purposes
- for duplication beyond the two copies allowed by the guidelines or
- if distributed beyond the scope of the guidelines.

Copyright and Electronic Publishing

Protections continue to exist for copyright holders whether their work exists in print or resides on a database, CD-ROM, bulletin board or on the Internet. A copy of a work made for personal use from an electronic source such as the Internet is likely to be seen as Fair Use. However, the same copy made and uploaded to a personal website, is less likely to be considered Fair Use.

Material from the Internet

Material found on the Internet is not necessarily in the public domain. It includes both copyrighted and non-copyrighted material. When in doubt about the status of work obtained from the Internet, always

- assume that the material is copyrighted
- credit the source of the information
- determine whether the author of a work (e.g., video, audio, graphic or icon) provides information on how to use his/her work. If explicit guidelines exist, follow them.
- request copyright for permission from the owner, when feasible. Keep a copy of the request for permission and the permission received.

Digital Copyright Law

Because technology makes it so easy to copy and transmit protected works, copyright infringement has become a particularly serious issue for educational networks. To address that issue, The Digital Millennium Copyright Act (DMCA) of 1998 was established and through it educational institutions are afforded some safeguards should their students, faculty or employees violate the law. To maintain the ongoing protection of DMCA, the Conservatory IT department must promptly take down or block access to any material which violates copyright law as soon as it is notified of the infringement, whether or not the individual who has violated the law has received notice of the violation or not.

If NYCDA receives more than two such notices of infringement within a three-year period that have been committed by an individual student, faculty or staff member during the course of their study, teaching or research the consequences are very harsh. The Conservatory, its staff, faculty and students are liable for substantial damages for any copyright infringement which occurs on the NYCDA network. In a civil action, the individual who violates the law may be liable for either actual damages or statutory damages of up to \$30,000 (which may be increased to a limit of \$150,000 if the court finds that the infringement was willful). In addition, individuals who infringe on a copyright may be subject to criminal prosecution. Criminal penalties can include up to ten years imprisonment depending on the nature of the violation.

While NYCDA encourages the free flow of ideas and information and provides resources to support this activity, through its network, it abides by all applicable state and federal laws. NYCDA further does not condone the illegal or inappropriate use of material that is subject to those laws.

Violation Of Federal Law

Some examples of copyright infringement that may be found in the Conservatory setting include

- Downloading and sharing MP3 music, video, and game files without permission of the copyright owner
- Making a film or a large segment of a film available on a web site without permission of the copyright owner
- Enhancing a departmental web site with downloaded music or artwork scanned from a book without attribution or permission of the copyright owners
- Scanning a published photograph and using it without permission or attribution
- Placing several full-text articles on a course web page that is not password protected and which is accessible to anyone through the Internet
- Placing an electronic copy of a standardized test on a department's web site without permission of the copyright owner
- Downloading licensed software from unauthorized sites without permission from the copyright or license holder
- Using a corporate logo without permission

Sharing And Downloading Files Illegally

While NYCDA understands that some copyright holders give their permission to download MP3 files, some MP3 files are copyright free, some can be legally obtained through subscription services and some videos may be found that are not copyright protected, it is also aware that **most** MP3 and video files that are shared fall into none of these categories.

Copyright Law allows individuals to make a copy of a purchased file strictly for personal use. *Personal use* does not include selling or giving a copy of the file to others. Under copyright law MP3s may be created only for songs to which an individual already has rights. That is, songs which were purchased on a CD or downloaded from a subscription service.

Getting Caught

The Recording Industry Association of America, the Motion Picture Association of America and the Business Software Association are only a few of the organizations that represent copyright owners in an effort to stop possible infringement of their copyrighted work i.e. music, movies, and software. They do that by using automated software systems to locate and identify copyright infringers.

NYCDA's network is protected by a powerful software program which prevents Peer to Peer (P2P) file sharing. However, should that program fail to block all protected material, NYCDA will receive a violation notice from one of the organizations representing copyright holders. The notification will include the IP Address of the copyright infringer, which the Information Technology (IT) department will locate and trace to the end user. The IT Administrator will immediately restrict access to any Internet resources from that computer and notify the individual that the infringing material must be removed from their computer before their Internet access will be restored.

First-time Notifications: Individuals receiving a first notice will also be sent a formal warning letter from NYCDA asking the individual to remove the copyrighted material from their computer and not to repeat the offense. NYCDA's Human Resources Director and Registrar will receive a copy of the letter for the individual's file and a copy will also go to the DMCA Office. If the

violation was committed by a student, a report of it will be sent by IT to Student Services and the Director of Academic Affairs. If the violation was committed by a faculty or staff member IT will notify the Director of Academic Affairs or the appropriate department head along with Human Resources. Once the illegally downloaded material is removed from the computer, Internet access will be restored.

Second Notification Process for Students: Students notified of copyright infringement a second time will be denied incoming and outgoing access to the Internet for at least four weeks. A hearing with Student Services and the Director of Academic Affairs will be held to determine what sanctions are appropriate. Any attempt by the student to connect his/her computer to the Internet from an NYCDA port assigned to another or through an open port in the Computer Lab or via the wireless network will be subject to further disciplinary action.

Subsequent Notification Process for Students: Students notified of a third copyright infringement will be subject to a inquiry by Student Services to determine the severity of the infringement. In addition their access to the Internet from their personal computers will be restricted for an entire semester after the action is taken. Any attempt by the student to connect his/her computer to the Internet from an NYCDA port assigned to another or through an open port in the Computer Lab or via the wireless network will be subject to further disciplinary action.

Second Notification Process for Faculty, Graduate Students and Staff: Faculty and staff who are engaged in teaching are expected to understand and act in accordance with applicable copyright laws. NYCDA for its part is obligated to exercise greater responsibility to address repeated infringing activity by these individuals. There are potentially serious implications for both the individual and the Conservatory if more than two infringement notices are received citing a single individual during a three-year period. For this reason, a second notification of an individual's infringing activities is cause for further disciplinary action. NYCDA's Chief Executive will also be notified of the infringement and a meeting with relevant administrators will be held to determine the action(s) to be taken.

Response to A Subpoena: NYCDA is obligated to turn over any electronic information regarding specific instances of infringing material allegedly transmitted over its network, upon receipt of a valid subpoena.

Reporting Copyright Infringement

Alleged copyright infringements on NYCDA systems or direct other copyright questions can be addressed to Copyright@sft.edu.

Related Policies & Links

[Digital Millennium Copyright Act of 1998 \(DCMA\)](#) (see Title II, § 512)

[Template for Letter of Warning to Staff for Copyright Infringement](#)

[DCMA: U.S. Copyright Office Summary](#)

[Copyright Office: Agent Designation for Service Providers](#)

Related File-Sharing Documents:

[Tips on File Sharing with Peer-To-Peer \(P2P\) Applications](#) (Brown)

[Guide to Using Peer-to-Peer File-sharing](#) (Duke)

[FAQ on File-sharing and Copyright Law](#) (Stanford)

[Disabling Peer-to-Peer File Sharing](#) (University of Chicago)

The [Electronic Frontier Foundation](#) has advice on [how to avoid being sued](#).

Legal Music and Movies Online:

[Legal Alternatives for Online Music and Movies](#) - A comprehensive listing of options