

# **Copyright Compliance Policy for Members of the Alliant International University Community**

## **Introduction**

It is the policy of Alliant International University (AIU) that all members of the University Community must comply with U.S. Copyright Law. To provide for a high-quality education for students of AIU, University faculty often find it useful to make available to their students copyrighted material. Faculty frequently find that an effective means to make such information available is to copy and distribute it to students. The Copyright Act of 1976, 17 U.S.C. § 1 et seq. provides for duplication of copyrighted materials by the copyright owner, with the permission of the copyright owner or when the copying is considered a “fair use” of the material.

To encourage legitimate copying by the AIU faculty, staff and students within the scope of the Copyright Act and in furtherance of their educational, research, creative, and scholarly pursuits, AIU is publishing these general policy guidelines. The goal of this document is to provide faculty and staff with a general understanding of copyright law and the applicability of the fair use doctrine in teaching and research. Appropriate application of fair use in education is dependent on a fundamental knowledge of copyright law and educators can only make informed, good faith fair use judgments when they understand the concepts and principles behind the statutes.

## **Copyright Basics**

A copyright is the set of exclusive legal rights authors or creators have over their works for a limited period of time. These rights include copying the works (including parts of the works), making derivative works, distributing the works and performing the works. To qualify for copyright protection, the work must be original, creative to a minimal degree and in a fixed or tangible form of expression.

Copyrighted works are protected regardless of the medium in which they are created or reproduced. Copyrighted works include, but are not limited to, printed articles from publications, TV and radio programs, videotapes, music performances, photographs, training materials, manuals, documentation, software programs, databases and web pages. In general, the laws that apply to printed materials are also applicable to visual and electronic media and works transformed into digital format.

Copyright does not protect and anyone may use:

- works in the public domain - (works belonging to the public as a whole including U.S. Government documents and works with an expired copyright or no existing protection).

- facts and ideas
- works that lack originality
- freeware

The “First Sale Doctrine” allows the purchaser of a work to do with it as he/she pleases. The work can be resold, given away, donated or thrown out. However, it cannot be copied in violation of copyright law.

### **Fair Use Doctrine**

Copyright law begins with the premise that the copyright owner has exclusive rights to many uses of a protected work. The Copyright Act sets forth several exceptions to those rights. The best-known exception is fair use. The fair use provision under the copyright law provides that the fair use of a copyrighted work, including reproduction, is not an infringement of the copyright. Fair use applies to all copyrighted works regardless of the media in which they are fixed. The statute lists six exemplars of fair use:

- criticism,
- comment
- news reporting
- teaching (including multiple copies for classroom use)
- scholarship
- research.

University faculty, staff and students may make copies of copyrighted materials within the Fair Use Doctrine. Otherwise, the appropriate permissions from the copyright holder are required before making copies. Fair use assertions depend upon an examination of the facts surrounding each case and the factors identified in the applicable copyright statutory provisions along with the court cases interpreting the statutes. The fair use standard requires consideration and balancing by University faculty, staff, and students of the following factors to determine whether duplication or use by a party other than the copyright owner constitutes fair use:

- The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes. In general, uses for educational purposes at nonprofit institutions weigh in favor of fair use. If the use is commercial, fair use is less likely to be found. Copies used in education, but sold at a monetary profit would not be fair use.

- The nature of the copyrighted work. The nature of works may range from pure facts to highly creative works. Some works are closer to the core of copyright protection than others. Examples: fiction (more protection) and factual works (less protection); motion pictures (more protection) and news broadcasts (less protection); creative works (more protection) and compilations (less protection); in print (more protection) and out of print (less protection); unpublished (more protection) and published (less protection).
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole. No exact measures of allowable quantity exist in the law. Amount is both quantitatively and qualitatively measured. Quantity is evaluated relative to the length of the entire original and the amount needed to serve the educational objective. Where only a small portion of the work is to be copied and the work would not be used if purchase or licensing of a sufficient number of authorized copies were required, the intended use is more likely to be considered fair. Copying excerpts that encompass most of the body of a work would weigh against fair use.
- The effect of the use upon the potential market for or value of the copyright. Educational uses that have little or no impact on the market value for the original work weigh in favor of fair use. Copying should not harm the commercial value of the work. As a general rule, there should be no copying of a copyrighted work to substitute for its purchase by the user. Factors to consider: Is the use educational? Is the work going to be used for more than one class and/or more than one semester? Is there a means to obtain permission from the copyright holder? Is the original out of print? Is the cost of the license or royalty prohibitive?

Teachers may make personal copies of copyrighted materials for scholarship and research purposes.

Some activities are even less likely to constitute fair use and should almost never be engaged in without the explicit permission of the copyright owner:

- Copying of materials for profit.
- Copying of published textbooks.
- Copying of unpublished materials.
- Copying of the same materials, e.g. coursepacks, for classroom use term after term
- Copying of works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests, test booklets and answer sheets.

The following are fair use guidelines only and will generally provide a safe harbor against claims of copyright infringement. However, each situation has to be evaluated based on the factors referenced above.

### **Coursepacks – Fair Use Guidelines**

Limit coursepack materials to:

- single chapters from a book
- single articles, essays, poems or stories from a periodical issue or newspaper
- a limited number of charts, diagrams, drawings, graphs, or pictures from a book, newspaper, or periodical issue
- other similarly small parts of a work
- limit to one semester or term
- limit the student's cost to the cost of reproducing the material
- obtain permission for materials that will be used repeatedly by the same instructor for the same class
- include any copyright notice on the original
- include appropriate citations and attributions to the source

The campus bookstore can assist faculty members in the preparation of customized coursepacks by working with outside vendors, e.g. Xanadu, to obtain the appropriate copyright clearances from the copyright owners, print the coursepacks and include the costs of this process in the eventual sale price of the coursepack. The process generally takes 4-6 weeks from the time the proposed coursepack material is submitted to the bookstore. Faculty members may make up their own coursepacks and secure the copyright permissions themselves.

### **Library Reserve – Fair Use Guidelines**

- Books – you may place the entire book (not a copy) on reserve or a photocopy of a complete chapter, story, article or essay from a collected work if it does not constitute a substantial portion of the total work.
- Journals and Newspapers – you may place a photocopy of one article, story or essay from a single issue per journal title on reserve.

- Illustrations – you may place one chart, graph, diagram, cartoon or picture per book or periodical issue on reserve.
- CDs – you may place the original item, but no copies, on reserve.
- Software – The Chief Information Technology Officer must verify licensing rights before you place software on reserve.
- Public Domain Works – you may reproduce works in the public domain without restriction.

### **Electronic Reserve – Fair Use Guidelines**

- single articles or chapters; several charts, graphs or illustrations; or other small parts of a work.
- a small part of the materials required for the course.
- copies of materials that a faculty member or the library already possesses legally (i.e., by purchase, license)
- include any copyright notice on the original, appropriate citations and attributions to the source.
- limit access to students enrolled in the class. Terminate access at the end of the semester.
- obtain permission for materials that will be used repeatedly.

### **Educational Multimedia – Fair Use Guidelines (The rights described herein are rights to create, display and perform unique works, but not to make multiple copies and distribute them)**

- faculty may incorporate others' works into their multimedia creations to produce curriculum materials for educational use. Faculty may retain multimedia products incorporating the copyrighted works of others for a period of two years. After that, permission is required.
- faculty may provide for multimedia products using copyrighted works to be accessible at a distance provided access is limited to students. However, the performance and display of an entire copyrighted audiovisual work such as a videotape, DVD or video file is not allowed for distance education.
- faculty may demonstrate their multimedia creations at professional symposia and retain such work in their own portfolios.

- for text, use is limited to 10% of the work or 1,000 words, whichever is less.
- for photos and images, use is limited to five works from one author and 10% or 15 works, whichever is less, from a collection.
- for database information, use is limited to 10% or 2,500 fields or cell entries, whichever is less.
- for motion media (e.g., video clips), use is limited to 10% or three minutes, whichever is less.
- for music, use is limited to 10% or 30 seconds, whichever is less.

### **Software Copying**

- software owners are permitted to make a back-up archival copy of software in the event the original disk fails to function.
- back-up copies are not to be used in a second computer at the same time the original is in use.
- back-up copies are to be destroyed if the original software is sold or otherwise transferred to a third party

### **Use of Copyright Protected Material - Options**

#### **Obtain Permission From Copyright Holder**

- It is always safest to obtain written permission from the copyright holder. The earlier the request is sent the better. Ideally, the request should be in writing and clearly describe the scope of permission.
- Information regarding ownership and licensing of registered works can be found at the following websites: [www.wwauthorsregistry.org](http://www.wwauthorsregistry.org); [www.copyright.com](http://www.copyright.com) (Copyright Clearance Center); [www.loc.gov/copyright/search](http://www.loc.gov/copyright/search); If the work you want is registered with these organizations, permission can typically be obtained within 36 hours.
- Preparation, copying and licensing of coursepack materials in hardcopy and electronic format can be facilitated through the use of services such as XanEdu at [www.xanedu.com](http://www.xanedu.com). These services are generally available through the campus bookstores or by going directly online. The lead-time for preparation of coursepack materials through XanEdu can range from 4-6 weeks.

### **Rely on Fair Use Exception When Permission is Not Obtained**

- This requires that faculty, staff and students consider and balance the guidelines and factors set forth above in determining whether duplication or use by a party other than the copyright owner constitutes fair use.
- If faculty and/or staff act in good faith in applying the general guidelines set forth above regarding fair use, the AIU indemnification policy will likely offer protection in the event of an infringement allegation.

If there are any questions or comments regarding the provisions of this policy, please feel free to contact the AIU legal department.

Mark A. Brody  
Assistant University Counsel  
Alliant International University