

## Copyright Policy and Compliance Program

*(Excerpt from Personnel Policies and Procedures Manual)*

### 4.29 Copyright Policy and Compliance Program

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Stetson University respects copyright and similar rights of ownership. United States copyright law contains many gray areas, and the goal of this policy and compliance program (“Program”) is to help members of the University community address issues relating to copyright and intellectual property.

Specific issues addressed in this Program include the importance of copyright protection; guidance on compliance; classroom issues such as photocopying, online and electronic education, and course packs; library uses for print and electronic reserves, interlibrary loans, and document delivery; compliance with the Digital Millennium Copyright Act; restrictions and alternatives to unlawful peer-to-peer file sharing on the network; and penalties and sanctions associated with violations.

#### **A. General Overview**

United States law, and often the laws of other countries, protects the work of individuals from unauthorized use. In the United States, the term “copyright” refers to the legal protection granted to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.”<sup>2</sup> Copyright law provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (Title 17 of the U.S. Code). If a user of copyrighted material is not a copyright holder for a particular work, as determined by the law, the user must ordinarily obtain copyright permission before reusing or reproducing that work. However, some specific exceptions exist for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

#### **1. Copyright protection**

Understanding what is protected by copyright is the key to compliance. The rights granted by the Copyright Act are intended to benefit “authors” of “original works of authorship,” including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This means that virtually any creative work—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts’ and consultants’ reports; and non-print materials, including electronic content, computer programs, and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Copyright law does not protect ideas, data, or facts.

Among the exclusive rights granted to those “authors” are the rights to reproduce, distribute, publicly perform, and publicly display their works. These rights provide copyright holders control over the use of their creations and an ability

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<sup>2</sup> Copyright Basics, Circular 1, published by the U.S. Copyright Office.

to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to “make a derivative work,” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art.

In the United States, a copyright for a work created on or after January 1, 1978 generally lasts for the author’s life plus 70 years after the author’s death. Works created by companies or other organizations generally have a copyright term of 95 years. For more information on copyright duration, see Circulars 15a and 92, available from the U.S. Copyright Office.

## 2. Fair use

Copyright protection is not absolute; rather, it is subject to certain exceptions that allow for limited use in some circumstances. The most notable limited use arises under a doctrine referred to as “fair use,” which permits the photocopying or use of copyrighted work without the copyright owner’s permission in very limited circumstances. While no precise formula exists for determining whether a use is sufficient to constitute a fair use, Section 107 of the United States Copyright Act lists the following four factors to consider:

- a. the purpose and character of the use, including whether such uses of a commercial nature, or is for non-profit educational purposes;
- b. the nature of the copyrighted work;
- c. the amount and substantiality of the portion of the work used in relation to the work as a whole;
- d. the effect of the use in question upon a potential market floor, or value of the copyrighted work.

No one factor is determinative. Instead, fair use requires a circumstance-specific analysis. To avoid confusion and minimize the risk of copyright infringement, the University interprets the following situations as fair use:

- Quoting short passages in a scholarly or technical work for illustration or clarification of the author's observations (with appropriate citation).
- Reproducing material for classroom use where the reproduction is unexpected and spontaneous; for example, where an article in the morning's paper is directly relevant to that day's class topic. This would generally cover one-time use in only one semester.
- Using a parody of short portions of the work itself.
- Summarizing an article, which may include quoting short passages.

If a contemplated use does not meet these criteria and the work is protected by copyright, the user probably needs to obtain permission from the copyright holder or its agent to use the work.

For additional details on how the four factors are applied, please view the following resources:

- The United States Copyright Office
- *The Campus Guide to Copyright Compliance*, by the Copyright Clearance Center
- *Know Your Copy Rights*®, by the Association of Research Libraries
- Catholic University Campus Legal Information Clearinghouse webpage on copyright compliance.

## 3. Types of use

In an academic setting, the following are the typical and expected uses of copyrighted materials, with guidance for each. Where permission is needed, please allow an adequate amount of time for securing proper copyright permission. Information about how to obtain permission is contained in Section B below.

a. **Classroom handouts**

Based on the University's fair use analysis, classroom handouts fall into two categories: one that requires permission and one that does not. If the handout is a new work for which the user could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, the user may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, the user must obtain copyright permission to use the work.

b. **Course packs**

All articles, chapters, and other individual works in any print or electronic course pack require copyright permission. Copyright permission for course packs is usually granted by academic period. To reuse a course pack in a subsequent semester or academic session, you probably need to obtain permission again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.

If a faculty member is either making his or her own copies or has arranged copying on campus, the faculty member is responsible for obtaining any needed permissions. When ordering course packs to be copied through the Bookstore, the Bookstore can assist in obtaining the necessary permissions through an outside vendor.

c. **Reserves**

If our library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, copyright permission must be obtained. This will ordinarily be done by the faculty member who requested that the publication be placed on reserve, unless the library agrees to other arrangements.

d. **Photocopying in the library**

It is permissible to photocopy copyright-protected works in the library without obtaining permission from the copyright owner under the following circumstances: Library user requests for articles and short excerpts. At the request of a library user or another library on behalf of a library user, the library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research. As recommended by Section 108 of the Copyright Act, the library must display the copyright register's notice at the place where library users place their reproduction requests.<sup>3</sup>

1. Archival reproductions of unpublished works. Up to three reproductions of any unpublished work may be made for preservation or security, or for deposit for research use in another library or archive. The

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<sup>3</sup> Under Section 108, eligible libraries and archives may reproduce materials for library users' private study, subject to various conditions. One condition is the posting of copyright notices in two key places: on the order forms used to request copies and at the place where orders for copies are accepted. The register's notice refers to the text required for this notice detailed in 37 C.F.R § 201.14, available at <http://www.copyright.gov/title37/201/>.

copies may be photocopies or digital reproductions. For a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Before receiving any of the permitted reproductions from another library or archive, Stetson's library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.

2. Replacing lost, damaged or obsolete copies. Stetson's library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating, or stored in an obsolete format. Any digital reproduction must be kept within the confines of the library (that is, available on its computer but not placed on a public network).
3. Library user requests for entire works. The library may make one reproduction of an entire book or periodical at a library user's request, or by another library on behalf of a library user if the following conditions are met. First, the library must determine that, after reasonable investigation, an authorized reproduction cannot be obtained at a reasonable price. Second, once a reproduction is made, it must become the property of the library user. In addition, the library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship, and research.

e. **Photocopying by members of the campus community**

Photocopying by students and other members of the campus community is also subject to a fair use analysis. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

f. **Document delivery services and interlibrary loan**

Stetson's library may participate in interlibrary loans without obtaining permission, provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. The University follows the CONTU guidelines<sup>4</sup> for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year, or a total of six or more copies of articles published within five years before the date of request would be too many under CONTU. If the articles or items being copied have been obtained through a digital license, you must check the license to see whether interlibrary loan is permitted. Photocopying for Document Delivery Services requires copyright permission.<sup>4</sup>

g. **Electronic education and course management systems**

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act expanded the latitude that universities have to perform and display of copyright-protected materials in a distance-education environment, including through the use of Course Management Systems (CMS). The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated, or involves works that have existed long enough that one could

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<sup>4</sup> The CONTU guidelines refer to guidelines developed by the National Commission on New Technological Uses of Copyrighted Works to help librarians and copyright owners. For additional detail and the guidelines, see [http://www.copyright.com/Services/copyrightoncampus/content/ill\\_contu.html](http://www.copyright.com/Services/copyrightoncampus/content/ill_contu.html).

reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission.

### h. **Copyright and foreign works**

The United States is a signatory to the leading international copyright treaty, the Berne Convention. As such, when Stetson uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.).

## **B. Obtaining Copyright Permissions**

Permission to use copyright-protected materials, when required, should be obtained before use. It is best to obtain permission in writing (including e-mail) and to retain a copy of each permission form or letter. The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months in advance. If you need a quicker permission, let the copyright owner know.

Once you have identified the materials you want to use and determined that copyright permission is required, you must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work. The Copyright Office of the Library of Congress ([www.loc.gov](http://www.loc.gov)) may be of assistance in locating a copyright owner if the work is registered. But, registration is not required.

The primary method for obtaining permission to use the work is contacting the copyright holder directly. The copyright holder or its agent will typically require the following information to consider your request:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which you wish to reproduce the item (research, commercial, educational, etc.)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

Stetson librarians can help you with this process.

## **C. Obligations of the Institution and the Campus Community**

### 1. Institutional obligations

The University acknowledges several obligations with respect to copyright compliance. First, and as part of our general accreditation requirements and due to changes in the laws governing higher education, the University has developed this Program to educate our community about the importance of compliance and about the penalties associated with violations. This Program has also been designed to meet the notice and other requirements under the Digital Millennium Copyright Act and to provide detail on the University's prohibition against unlawful downloading or peer-to-peer file sharing.

### 2. Students

Student copyright compliance is addressed as part of the larger student obligation to maintain academic integrity under the Academic Honor System. Violations of copyright law can subject a student to sanctions under that policy in addition to legal penalties and consequences.

### 3. Faculty and staff

All faculty and staff who use copyrighted materials are expected to determine whether using that material would violate any copyright held by the owner or whether the contemplated use falls within any of the various exceptions to the copyright law, such as “fair use.”

When conducting conferences and educational programs organized through the University, the University requires all speakers to complete a release verifying copyright compliance with respect to materials submitted for dissemination. The Bookstore uses an outside vendor to assist in reproducing and delivering materials. The outside vendor also has a method in place for obtaining necessary approvals. Faculty and staff who wish to use these services should allow adequate time for securing proper copyright permission.

## D. Infringement Reporting Generally

If you suspect that anyone at the University is using copyright-protected material without appropriate permission, immediately report the matter to the Office of the Provost (DeLand/Celebration) or the Associate Dean for Academics (Law campuses). If you are the copyright holder or represent the copyright holder and the alleged infringement is posted online, follow the DMCA procedures below.

## E. Digital Millennium Copyright Act

The Digital Millennium Copyright Act permits the University, as an online service provider, to designate an agent to receive notifications of claimed infringement. By following this and other provisions of the DMCA, the University, in its capacity as an online service provider, can limit its potential liability for storing copyrighted material, when that material is placed on the system or network by someone else.

### 1. Designated agent

Under the DMCA, the following agent has been designated by the University, including its College of Law, as the individual to whom notices of an alleged online copyright infringement are to be sent:

F. Robert Huth, Jr.

Vice President for Business and CFO

Stetson University, Inc. 421 N. Woodland Blvd. DeLand, FL 32720-3756

### 2. Reporting claims of copyright infringement

Claims of copyright infringement should be sent to the designated agent listed above. For a notification of a claimed infringement to be effective under the DMCA, it must be in writing. When sending written notice of an alleged copyright infringement, the individual submitting the claim should:

- a. Identify the copyrighted work that allegedly has been infringed. If multiple copyrighted works at a single online site are involved, please provide a list of the works on that site.
- b. Describe the material claimed to be infringing. Please provide sufficient information to permit the University to locate that material.

- c. Certify or include a statement that you have a good-faith belief that the use of the copyright-protected material in the manner complained of is not authorized by the copyright owner, the owner's agent, or law.
- d. Certify that the information that you have provided is accurate. You should attest under penalty of perjury that you are authorized to enforce the copyrights that you claim have been infringed.
- e. Provide your contact information, including an address, telephone number, and, if available, an e-mail address.
- f. Include a physical or electronic signature of the copyright owner or person authorized to act on behalf of the owner.

The University may not be able to act on your complaint promptly or at all if you do not provide the information listed above.

When the University is notified of a claimed copyright infringement, or otherwise becomes aware of facts and circumstances from which infringement is apparent, it will respond appropriately. This may include removing or disabling access to the material that is claimed to be infringing. The University will follow the procedures outlined in the DMCA with regard to appropriate notifications of the user and the complaining party, acceptance of counter notifications, and, where indicated, a restoration of the alleged infringing material. For additional information, see a summary of the provisions of the DMCA, available from the United States Copyright Office at <http://www.copyright.gov/legislation/dmca.pdf>.

## F. Penalties and Consequences for Infringement<sup>5</sup>

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under Section 106 of the Copyright Act. These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Within the University, an individual's computing privileges and systems access can be suspended or terminated for violations of copyright or violations of the University's Web Publishing Code of Conduct (DeLand/Celebration) or the College of Law's Computer and Network Resources policy.

Copyright infringement may also subject an individual to a range of civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed as not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines up to \$250,000 per offense. For more information, please see the website of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov), and especially the FAQ's at [www.copyright.gov/help/faq](http://www.copyright.gov/help/faq).

## G. Peer-to-Peer Networking

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<sup>5</sup> This statement of penalties is based on U.S. Department of Education letter DCL: GEN-10-08.



In general, peer-to-peer networking occurs when “computers communicate directly with each other, rather than through a central server.”

1. Technology deterrents: The University has a plan to combat the unauthorized distribution of copyrighted materials; this plan includes a variety of technology deterrents, including a method for deterring the downloading of music. Any attempt to circumvent or violate these technology-based deterrents is strictly prohibited. Current deterrents include:
  - a. configuring the network firewall to block all known and suspected peer-to-peer/file-sharing websites or IP addresses;
  - b. running reports that monitor bandwidth to check for excessive downloading or uploading or other unusual spikes of activity;
  - c. configuring network access to prevent multiple (file/server) connections to a single computer connected to the network; and
  - d. blocking access in the event of repeat offenses.
2. Alternatives to illegal downloading: Members of the campus community are directed to the list of alternatives maintained by EDUCAUSE, <http://www.educause.edu/Resources/Browse/LegalDownloading/33381>
3. Education: All members of the campus community are encouraged to view a series of copyright tutorials made available through EDUCAUSE to educate individuals about peer to peer file sharing and other important copyright issues.
4. Periodic Review: The University will periodically review legal alternatives for downloading or otherwise acquiring copyrighted material. The results of such reviews will be made available to students through email, the website, or some other means.

*Cross-References: College of Law Computer and Network Use Policy.*