

ROSALIND FRANKLIN UNIVERSITY OF MEDICINE AND SCIENCE

COPYRIGHT POLICY

Introduction

Rosalind Franklin University of Medicine and Science (the “University”) is dedicated to the free exchange of ideas and the creation of knowledge. As a part of its educational mission, Rosalind Franklin University, its faculty, students and staff participate in research and the advancement of scholarship in a broad range of topics. The University is also committed to respecting the intellectual property rights of others, including those of copyright owners, and to following the copyright laws of the United States.

With the growth of the Internet and the increasing popularity of the electronic dissemination of digitized information, the potential for misuse of copyrighted works has become greater, making the need for a clear copyright policy more critical. Rosalind Franklin University therefore has instituted the following Copyright Policy in order to educate its faculty, students and staff about the basics of copyright law, to encourage the proper use of copyrighted works and to inform faculty, students and staff about the serious penalties that arise from the misuse of copyrighted works.

The Copyright Act, 17 U.S.C. § 101 *et seq.*, seeks to balance the property rights of creators with the public’s interest in using copyrighted materials in order to learn and create new works. Similarly, our Copyright Policy has been designed to strike the appropriate balance between the protection of copyrighted works and the promotion of the University’s academic goals. All faculty, students and staff must adhere to the Copyright Policy and to U.S. copyright law. Repeated or willful violators will be subject to disciplinary action by the University, including termination of the violator’s network account. In addition, violators could also face possible civil and criminal penalties arising out of federal copyright law. In view of these potentially harsh penalties, all faculty, students and staff should carefully review the Copyright Policy and follow its guidelines.

What Copyright Law Does and Does Not Protect

Copyright law automatically protects original works of authorship from the moment that they are fixed in any tangible medium of expression. This means that, once a work is created in a fixed form, an original work automatically becomes the property of the author who created the work. Among the broad categories of original works of authorship that copyright law protects are:

- Literary works;
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;

- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works

While these categories are viewed broadly and are not meant to be exclusive, not all original works of authorship are eligible for copyright protection. For example, copyright protection does not extend to ideas, but only to the particular original manner in which those ideas are expressed. In fact, copyright law specifically excludes several categories of material from protection. These include:

- Works that have not been fixed in a tangible medium of expression;
- Works that lack the minimum level of creativity to qualify for copyright protection (e.g., facts and mathematical formulae);
- Works in the public domain, including non-copyrightable works as well as copyrighted works for which the term of copyright has expired; and
- Any work prepared by an employee or officer of the federal government in their official capacity, such as federal statutes or judicial opinions.

Copyrighted works often contain a copyright notice identifying the copyright owner and the year of first publication (e.g., © 2004 Rosalind Franklin University of Medicine and Science). However, the absence of a copyright notice does not mean that a work is unprotected, and ignorance of whether a work is protected by copyright is not a defense to a claim of copyright infringement. Therefore, if you do not know or are unable to determine whether a work is protected by copyright, you should error on the side of safety and presume that the work is copyright protected.

The Exclusive Rights of Copyright Owners

The owner of a copyrighted work has several exclusive rights. These rights may be licensed individually to third parties, such as publishers or employers, or retained as a “bundle” of rights by the author. Copyright ownership, and the ownership of the exclusive rights in the copyrighted work, are separate from the ownership of tangible copies of a copyrighted work. In other words, mere ownership of a copy of a book, painting, movie or other copyrighted work does not give the possessor copyright in that work. Accordingly, with some exceptions, the copyright owner has the exclusive right to:

- Reproduce the copyrighted work;
- Prepare derivative works based upon the copyrighted work;
- Distribute copies of the copyrighted work to the public;
- Perform the copyrighted work publicly;
- Display the copyrighted work publicly; and
- Perform the copyrighted work publicly by means of a digital audio transmission in the case of sound recordings.

It is illegal for anyone to violate one or more of these exclusive rights, and such misuse is referred to as “copyright infringement.” Copyright infringement often arises unintentionally from common activities such as photocopying materials or posting digital text, images or music files to, or downloading them from, the Internet. A copyright owner’s exclusive rights are not unlimited, however. As discussed more fully below, the Copyright Act provides for several specified exemptions from copyright liability such as the doctrine of “fair use.”

It is the policy of the University that, unless a work falls into one of the categories of works excluded from copyright, has been authorized by the copyright owner or qualifies as a “fair use” or other exempted use (as discussed below), then no University faculty, student or staff member may make any use of that work that would infringe any of the exclusive rights of the copyright owner. Accordingly, if you are not sure whether a work is protected by copyright or whether your intended use qualifies as an exempted use, the best way to protect yourself from potential claims of infringement is to refrain from reproducing, distributing, modifying, displaying or publicly performing that work.

Penalties for Copyright Infringement

You do not have to intend to violate a copyright owner’s exclusive rights in order to be liable for copyright infringement. In other words, even unintentional infringement violates copyright law and subjects you to civil penalties. In a suit for copyright infringement, a copyright owner may seek judicial and monetary relief including:

- Actual monetary damages caused by the infringement;
- Statutory damages of up to \$150,000 *per work* infringed (where applicable);
- Profits of the infringer that are attributable to the infringement;
- Temporary or permanent injunctive relief against the infringer;
- Court costs and attorneys’ fees; and
- Impoundment or destruction of infringing materials.

In addition to being personally liable for your acts of infringement, if you use the University network or systems to infringe a copyright owner’s exclusive rights in its work, you may also create liability for the University. Accordingly, separate and apart from civil penalties that you may face in a suit by the copyright owner, repeated or willful infringement will result in disciplinary action by the University, including termination of the violator’s network account.

Obtaining Permissions

There is no blanket exemption that allows teachers or students to use a work in any way they wish for educational or scholarly purposes. Therefore, if a work that you want to use is protected by copyright, and if none of the exemptions discussed below apply to your use, under the Copyright Policy and federal copyright law you may only use the work with the copyright owner's permission.

Determining who the proper owner of a copyrighted work is can be difficult, especially since owners can license some or all of their exclusive rights to others such as publishers or employers. If you are having difficulty determining the identity of the copyright owner of a particular work, try consulting the U.S. Copyright Office's online catalog or the Copyright Clearance Center. Book, magazine and periodical publishers are also good sources for determining copyright ownership, and the University library also has access to several directories, databases and indexes that may be useful in identifying the copyright owner of a work.

If you determine that permission is required for your intended use of a work, you may obtain permission for your use in a variety of ways, including directly from the copyright owner or through copyright clearinghouses such as the Copyright Clearance Center. Several clearinghouses even provide online forms to help expedite and simplify the process. Keep in mind that even when you obtain permission to use a copyrighted work, you must be careful to ensure that your use complies with the terms of the permission that you have obtained. In other words, if you have obtained permission to distribute photocopies of the text of play but have not obtained permission to perform the play publicly, you should restrict your use of the copyrighted work accordingly.

Limitations on Exclusive Rights: Uses Exempted from Copyright Liability

As discussed above, the scope of a copyright owner's exclusive rights is not unlimited. In fact, the Copyright Act allows certain kinds of copying, distribution, modification, display and performance of a copyrighted work – even without the copyright owner's permission – so long as certain requirements are met. The three exemptions that are most germane to your use of a copyrighted work as a faculty member, student or staff member are: (1) the fair use doctrine; (2) exemptions for certain educational performances and displays; and (3) exemptions for making ephemeral recordings of certain educational performances or displays.

1. The Doctrine of Fair Use

The doctrine of fair use is intended to balance the copyright owner's rights with the interests of third parties who wish to use copyrighted works in order to create new works of authorship. With this goal in mind, copyright law specifies that certain limited use of copyrighted works for the purposes of teaching, criticism, commentary, reporting, scholarship or research is considered a "fair use" that does not give rise to liability for copyright infringement.

The doctrine of fair use is flexible, and the law does not strictly specify the limitations of the doctrine, opting instead to leave each case to be decided according the facts specific to that use. Copyright law, however, does set forth four statutory factors to be considered

in determining whether a given use of a copyrighted work is a fair use. These four factors are:

- a) The purpose and character of the use (i.e., whether your use is commercial or noncommercial);
- b) The nature of the copyrighted work (whether it is, for example, a factual work or fiction, published or unpublished);
- c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d) The effect of the use upon the potential market for, or value of, the copyrighted work.

While there is no formula for success in invoking the doctrine of fair use, non-profit uses are favored over commercial uses. In addition, the use of factual or nonfiction works is favored generally over the use of works of fiction and the use of published works is permitted more frequently than the use of unpublished works. The use of small portions of a work is also preferable to use of larger portions of the copyrighted work. Finally, and most importantly, if your use will affect the sales or value of the copyrighted work, then the use is disfavored under the doctrine of fair use.

Some examples generally considered to be fair use include:

- Quotation of excerpts in a review or criticism for purposes of illustration or comment;
- Quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations;
- Use in a parody of some of the content of the work parodied;
- Summary of an address or article, with brief quotations, in a news report;
- Reproduction by a library of a portion of a work to replace part of a damaged copy;
- Reproduction by a teacher or student of a small part of a work to illustrate a lesson;
- Reproduction of a work in legislative or judicial proceedings or reports; and
- The incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.

There has been a long controversy over the doctrine of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. **There is no blanket exemption freeing reproductions of copyrighted works for educational and scholarly purposes from copyright protection.** In an effort to assist faculty, students and staff in determining whether such uses qualify as a fair use, the University has adopted the guidelines set forth in Appendices B and C to provide guidance concerning the use and reproduction of copyrighted works for educational purposes.

2. Exemptions For Certain Performances and Displays

- A. Face-to-Face Teaching – Certain educational performances and displays by law do not infringe a copyright owner’s rights provided that a list of criteria is satisfied. For example, copyright law has specifically carved out an exemption for certain uses of copyrighted works by educators in face-to-face teaching environments. Under this Copyright Policy and federal copyright law, University faculty members or students may perform or display a work (but not *reproduce* or *distribute copies* of the work):
1. In the course of face-to-face teaching activities in a classroom or similar place devoted to instruction;
 2. Where the instructor and the student are in the same location;
 3. The audience is comprised only of the members of one teaching class;
 4. The display of the work is a part of actual class time instruction;
 5. An instructor, student or guest lecturer made the decision to display the work; and
 6. The instructor or pupil does not know or have reason to know that the copy of the work used was not lawfully made or obtained.

If all of these criteria are satisfied, then the University faculty, student or staff member may show, display or perform the copyrighted work in the classroom, (including displaying videos, musical works, audiovisual materials, dramatic works and other copyrighted works) and no copyright liability will arise.

- B. Instructional Broadcasting – The Technology, Education, and Copyright Harmonization Act (the “TEACH Act”) updated copyright law in the area of digital distance education. The TEACH Act was intended to provide limited new exemptions to educators who teach via “virtual classrooms” at accredited nonprofit educational institutions in order to simulate the face-to-face instruction exemptions set forth above. Presuming that the numerous requirements of the TEACH Act are met, the Act facilitates the use of copyrighted materials in digital distance education efforts without having to first obtain permission from the copyright owner. Similar to the face-to-face exemption, while the TEACH Act provides new performance and display exemptions to educators, it does not extend the right to reproduce a copyrighted work or distribute such copies in the context of a virtual classroom.

The TEACH Act does not provide blanket performance and display exemptions. Instead, the TEACH Act imposes several requirements on the use of copyrighted materials in distance education. University faculty and students who wish to incorporate copyrighted works into digital transmissions

in connection with virtual classrooms and distance learning must meet all of the TEACH Act requirements set forth in Appendix E. Due to the complexity of the TEACH Act requirements, many educators opt to continue to rely on the doctrine of fair use in determining whether a use of a copyrighted work is permissible under federal copyright law.

3. Exemptions For Ephemeral Recordings of Instructional Broadcasts

Provided a list of criteria is satisfied, certain ephemeral recordings are considered not to infringe copyright. Two of those exemptions relate to making ephemeral recordings of Instructional Broadcasting transmissions discussed above. The requirements that must be met in order to qualify for these exemptions are set forth in Appendix F. As with the exemptions discussed above, however, each and every criterion must be satisfied in order for the exemption to apply to the ephemeral recording made by the University.

Copyright in the Digital World: The Digital Millennium Copyright Act

The Digital Millennium Copyright Act (“DMCA”) revised the Copyright Act and extended federal copyright law to, among other things, protect works from unauthorized electronic copying or distribution. The DMCA covers all works that are protected by copyright, including music, movies, software and text. Moreover, everyone who uses copyrighted or technologically protected materials on the University’s network or systems is restricted by the DMCA. In addition, under the broad definitions of the DMCA, the University may qualify as an “online service provider,” which potentially exposes the University to contributory infringement penalties should its faculty, students or staff infringe copyrighted works. Accordingly, it is critical that all University faculty, students and staff comply with the terms of the DMCA.

You may have already heard of the DMCA in connection with the lawsuits that have recently been filed by the Recording Industry Association of America (“RIAA”) against individual college students in several states. These suits grew out of the popularity of online file-sharing networks such as Kazaa, through which users could store and share thousands of copyrighted songs saved as digital files. In these lawsuits, the RIAA is seeking money damages up to \$150,000 per song.

A wide range of seemingly harmless activity can violate the DMCA. Some examples of potentially infringing activity include:

- Joining a file-sharing network;
- Burning copies of music that you have downloaded;
- Uploading MP3 files of copyrighted songs or other copyrighted materials and making them available on the Internet;
- Receiving an email with copyrighted material and forwarding it to others via email; and
- Either uploading or downloading pirated digital copies of movies or television programs.

If you use the University network or systems to engage in these activities, the University will take down and/or block access to infringed copyrighted materials once it is notified that University faculty, students or staff are sharing copyrighted works across its network. In addition, if you repeatedly engage in infringing conduct or willfully infringe the copyrighted works of others, the University will disable your network account and may take further disciplinary action against you.

In view of the broad application of the DMCA as well as the mounting seriousness with which copyright owners are treating the electronic misuse of their works, it is imperative that University faculty, students and staff be aware of the restrictions that federal copyright law places on their electronic copying and distribution of copyrighted works. Accordingly, in order to avoid University disciplinary action and possible civil penalties under federal copyright law, you should not make unauthorized copies of copyrighted works or share electronic copies of copyrighted works across the Internet or other University networks or systems. You also should remove all copyrighted material that you do not own from your computer. If you have additional questions about illegal file-sharing or the DMCA, further information can be obtained from the sources identified in Appendix A.

APPENDIX A – Additional Sources of Information

- University Office of General Counsel
- University Library Director
- The Copyright Act of the United States (www.copyright.gov/title17/)
- United States Copyright Office (www.copyright.gov)
 - Circular 1 (Copyright Basics)
 - Circular 21 (Reproduction of Copyrighted Works by Educators and Librarians)
 - Circular 92 (Copyright Law of the United States)
 - FL 102 (Fair Use)
 - Digital Millennium Copyright Act
- Crash Course in Copyright (www.utsystem.edu/ogc/intellectualproperty/cprtindex.htm)
- Stanford University Copyright and Fair Use (<http://fairuse.stanford.com>)
- Copyright Clearance Center (www.copyright.com)
- Online Permissions Clearinghouses (www.copylaw.com/permission.html#online)
- Association of American Publishers (www.publishers.org)
- The Recording Industry Association of America (“RIAA”) (www.riaa.org)

APPENDIX B - Guidelines For Classroom Copying Of Books And Periodicals

- A. Single Copying for Teachers – A single copy may be made of any of the following by or for a University teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
1. A chapter from a book;
 2. An article from a periodical or newspaper;
 3. A short story, short essay or short poem, whether or not from a collective work; or
 4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
- B. Multiple Copies for Classroom Use – Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the University teacher giving the course for classroom use or discussion, provided that:
1. The copying meets the tests of brevity and spontaneity as defined below;
 2. Meets the cumulative effect test as defined below; and
 3. Each copy includes a notice of copyright.

Definitions

1. Brevity
 - a) Poetry: A complete poem if less than 250 words and if printed on not more than two pages or, from a longer poem, an excerpt of not more than 250 words.
 - b) Prose: Either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in (a) and (b) may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.
 - c) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
 - d) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph (b) above notwithstanding, such "special works" may not be reproduced in their

entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

2. Spontaneity

- a) The copying is at the instance and inspiration of the individual teacher, and
- b) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

3. Cumulative Effect

- a) The copying of the material is for only one course in the school in which the copies are made.
- b) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- c) There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in (b) and (c) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

C. Further Prohibitions on Multiple Copying – Notwithstanding any of the above, the following shall be prohibited:

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
2. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
3. Copying shall not:
 - a) substitute for the purchase of books, publishers' reprints or periodicals;
 - b) be directed by higher authority;

- c) be repeated with respect to the same item by the same teacher from term to term.
4. No charge shall be made to the student beyond the actual cost of the photocopying.

APPENDIX C – Guidelines For Educational Uses Of Music

A. The following are permissible educational uses of music:

1. 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.
2. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
3. For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is confirmed by the copyright proprietor to be out of print or unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
4. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
5. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
6. A single copy of a sound recording (such as a cassette tape, compact disc, or DVD) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. The following are prohibited uses of music:

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.

4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

APPENDIX D – Guidelines for the Use of Computer Software (recommended)

(Currently the University has no such policy. We are checking to see whether such policies used by other educational institutions have been adopted from a model policy from governmental hearings, like the guidelines in Appendices B and C.)

APPENDIX E – Guidelines for Performance of Copyrighted Works in the Classroom, Distance Education and Public Settings

- A. Pursuant to the TEACH Act, the following types of copyrighted works may be broadcast or otherwise transmitted electronically by University faculty or other individuals at their direction or under their actual supervision:
1. A performance of a non-dramatic literary or musical work;
 2. Reasonable and limited portions of other works, including movies, and audiovisual works;
 3. A display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session.

The transmitted work cannot be a textbook, coursepack or other assigned material that is to be purchased or acquired independently by students. The transmitted work also cannot be marketed primarily for digital distance education performance or display. In addition, copies of the work to be transmitted must be legally obtained.

- B. The actual broadcasting or transmission of these works is also subject to several requirements, namely:
1. The transmission must be made solely for, and, to the extent technologically feasible, the reception of such transmission must be limited to, students officially enrolled in the course for which the transmission is made;
 2. The transmission must be made as an integral part of a class session during the course of actual class time instruction at an accredited nonprofit educational institution such as the University;
 3. The transmission must be made at the direction of, or under the supervision of, a University faculty member; and
 4. The performance or display must be directly related and of material assistance to the teaching content of the transmission.
- C. Any transient or temporary storage of this material on a system or network controlled or operated by the University must be maintained on such system or network in a manner that is not ordinarily accessible to anyone other than anticipated recipients, and no such copy will be maintained on the system or network in a manner that is ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

D. Finally, TEACH only exempts these displays, performances and transmissions if:

1. The University institutes policies regarding copyright, provides informational materials to faculty, students and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and
2. In the case of digital transmissions-
 - a) the University applies technological measures that reasonably prevent retention of the work in accessible form by recipients of the transmission from the institution for longer than the class session, and unauthorized further dissemination of the work in accessible form by such recipients to others; and
 - b) The University does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination.

APPENDIX F – Guidelines for Ephemeral Recordings

A. Making Copies of the Instructional Broadcasting Transmission

The University may make no more than thirty copies or phonorecords of a particular transmission program that was created in accordance with the requirements of the TEACH Act outlined in Appendix E if:

1. no further copies or phonorecords are reproduced from these; and
2. except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted.

B. Making Copies of the Copyrighted Work

The University, upon achieving compliance with the requirements of the TEACH Act outlined in Appendix E, may make copies or phonorecords of a work if:

1. such copies or phonorecords are retained and used solely by the University and no further copies or phonorecords are reproduced from them, except as authorized under the TEACH Act;
2. such copies or phonorecords are used solely for transmissions authorized under the Instructional Broadcasting transmission provision; and
3. in cases in which a digital copy is made from a work in print or other analog form, then only if:
 - a) no digital version of the work is available to the University; or
 - b) the digital version of the work that is available to the University is subject to technological protection measures that prevent its acceptable use under the TEACH Act.