DeSales University Copyright Policy

Adopted November, 2001 and updated March, 2019

"Be just and equitable in all your actions" St. Francis de Sales. Introduction to the Devout Life.

"Among the virtues, we should prefer that which is most comformable to our duty, and not that which is most comformable to our inclination." St. Francis de Sales. Introduction to the Devout Life.

As a private non-profit institution, DeSales University exists to advance knowledge through research, to disseminate knowledge through teaching, and to provide service to the public for continued learning. DeSales University is committed to providing these services in full compliance with the Copyright Law of the United States.

The United States Constitution grants Congress the power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." The purpose of copyright is to further knowledge for the public good by providing authors with an economic incentive to publish their works. The intended beneficiary of copyright is the public.

The U.S. Copyright Act 17 U.S.C. 101-810 was enacted to protect the writings of authors, as well as material related to architectural design, software, the graphic arts, motion pictures, and sound recordings. A copyright gives the owner exclusive right to reproduce, distribute, perform, display, or license a given work. The copyright or retransmission of copyrighted works in documents, document collections, or homepages without the written permission of the copyright owner or the existence of "fair use" is prohibited.

The 1998 enactment of the Digital Millennium Copyright Act (DMCA) represents the most comprehensive reform of the United States copyright law in a generation. The DMCA seeks to update U.S. Copyright law for the digital age, and it places new constraints on educational distribution of copyrighted works.

This policy has been developed as a guide to better understanding of copyright law and fair use. It does not constitute legal advice.

Fair use was initially a doctrine created by the courts in order to limit the monopolistic power of the copyright holder. The traditional view of fair use permitted unauthorized use of a copyrighted work if the desired secondary use advanced the public benefit from activities like research and teaching.

In 1976, Congress amended the copyright law and included a fair use provision. It chose to provide guidelines for the application of this doctrine rather than a uniform definition of fair use.

The four factors to be considered in determining whether the use made of a work in any particular case is a fair use include:
The purpose and character of the use
The nature of the copyrighted work
The amount and substantiality of the portion used in relation to the copyrighted work as a whole
The effect of the use upon the potential market for or value of the copyrighted work

Problems have arisen regarding the application of the four fair use factors listed in the Copyright Act. Courts of law have not weighted the factors uniformly. The scope of the fair use doctrine remains uncertain, even for traditional uses. The new technologies only increase the speculation that has long existed about what will qualify under the fair use exception.

With the passage of the Digital Millennium Copyright Act, the four factors for fair use remain applicable, but permitted uses appear to be more restrained.

Educators must consider the following factors in deciding if a proposed use falls under the fair use doctrine:

- There is a distinction between display and archiving of a copyrighted work. Using a copyrighted work in a class is a "display" but using it more than once over a period of time is "archiving" and is not a fair use.
- The allowable percent of use of a work that can be used without permission of the copyright holder has traditionally has been judged to be ten percent. That is no longer the case. The critical portion of a work that can be used without permission of the copyright holder is a subjective decision.
- Creating derivative formats and distributing them can be considered a form of publication and is not a fair use.
- Any use that impairs the ability of the copyright owner to earn money from his/her creation is not a fair use. New technologies such as electronic license agreements must now be considered and may not be circumvented.

To ensure compliance with copyright law, each use of a copyrighted work must at a minimum:

- Include a written educational purpose
- Consist of limited excerpts
- Include clear attribution

DeSales University encourages faculty, staff, and students to seek permission of the author or publisher whenever there is any doubt about a fair use of a copyrighted work.

DeSales University Copyright Guidelines have been developed to assist members of the DeSales University community in complying with federal copyright law and to enable them to distinguish between permitted and prohibited uses of copyrighted materials.
Members of the DeSales Community are expected to familiarize themselves with these guidelines and to conscientiously comply with their requirements.

Disregarding the DeSales University Copyright Policy places individuals at risk of legal action. In such cases, the university may refuse to defend the employee named in the court suit and that individual may incur personal liability.

Further reading:


- DeSales University. IT Department. *Copyright infringement*. Retrieved from [https://www.desales.edu/policies](https://www.desales.edu/policies)


**Guidelines for Multimedia Use in DSU Online Instruction.**

- Prior to streaming a video, the DeSales community is encouraged to first check the library’s Films on Demand database for media that is copyright cleared and can be directly linked into BlackBoard courses. It is available from the library website at [http://desales.libguides.com/az.php?a=f](http://desales.libguides.com/az.php?a=f)

These guidelines and resources for posting copyright-compliant media on the DSU streaming server are presented to encourage DSU faculty to integrate multimedia in online and hybrid courses.

**Quick-Check Streaming Server Posting Guidelines**

- Work is created and performed by faculty or students and used with permission.
- Media are textbook or software publisher resources and used with permission.
The copyright holder has been contacted and content is used with permission.

Entire work will be shown synchronously under the control or actual supervision of instructor and as an integral part of the class experience to fulfill an important instructional objective.

Portions of a copyrighted work are posted in accordance with either the doctrine of Fair Use (http://www.copyright.gov/title17/) or the expanded rights and privileges provided to educators in online environments provided by the TEACH Act (https://web.archive.org/web/20180408224010/http://www.ala.org/advocacy/copyright/teachact/faq)

**DeSales Streaming Media Policy for Copyrighted Works**

* Prior to streaming a video, the DeSales community is encouraged to first check the library’s Films on Demand database for media that is copyright cleared and can be directly linked into BlackBoard courses. Available from the library website at http://desales.libguides.com/az.php?a=f

An entire work may be streamed IF that work will be shown in a synchronous online class session and NOT made available for individual online viewing at any other time.

Without prior consent from the copyright holder, no more than 50% of a copyrighted work should be streamed as long as the portion(s) streamed does not contain a qualitatively substantial portion of the work and is not designed to replace a student's purchase of the copyrighted work.

Trexler library staff can help identify copyright holders and assist instructors with requesting copyright holder permission to use full-length works. Acknowledging a source does not substitute for seeking permission.

*Important: a Streaming Server Request Form and Copyright Waiver must accompany all media on the DSU streaming server.* Streaming Server media becomes unavailable to students seven (7) days after a course ends. Faculty media will be purged from the server after two years at the end of the academic year unless DEIT is otherwise notified in writing. TEACH Act time limits is our guide.

Note: The U.S. Copyright Law codified the doctrine of *Fair Use* in section 107 of the U.S. Copyright Law (http://www.copyright.gov/title17/).
Sample Copyright Permission Letter

[Letterhead stationery or return address]

[Date]

[Name & address of addressee]

Dear [title, name]:

I am [describe your position] at [name of institution] University. I would like your permission to
[explain your intended use in detail, e.g., reprint the following article in a course pack for my
course].

[Insert full citation to the original work.]

Please indicate your approval of this permission by signing the letter where indicated below and
returning it to me as soon as possible. My fax number and email address are set forth below.
Your signing of this letter will also confirm that you own [or your company owns] the copyright
to the above described material.

Thank you very much.

Sincerely,

[Your name and signature]

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Type name of addressee below signature line]

Date:

Instructions for Permission Letters

Be sure to include your return address, telephone number, fax number, and the date at the top of
the letter.
Spare no effort in confirming the exact name and address of the addressee. Call the person to
confirm the copyright ownership.
Clearly state the name of your university and your position.
Precisely describe the proposed use of the copyrighted material. If necessary or appropriate,
attach a copy of the article, quotations, diagrams, pictures, and other materials. If the proposed
use is extensive, such as the general use of an archival or manuscript collection, describe it in
broad and sweeping terms. Your objectives are to eliminate any ambiguities and to be sure the
permission encompasses the full scope of your needs.
The signature form at the end of the sample letter is appropriate when an individual grants the
permission. When a company (such as a publishing house) is granting the permission, use the
following signature format:
PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Type name of company]

By:

Title:

Date: