Copyright

Faculty must understand copyright law and should at the very least read the updated Catholic University Copyright Guidelines.

Licensed Works/Public Domain Works

The University licenses many works and these may generally be used without seeking permission. Works in the public domain also can be used freely. Works in the public domain include works created before the enactment of copyright statutes (e.g. Plato, Shakespeare), works where the copyright has expired (generally published before 1923), works without enough originality for copyright to apply (i.e. a simple photograph of a work of art), works donated to the public by the author (e.g. Creative Commons, and works of the U.S. government (e.g. case law, statutes, court opinions and Census Bureau data).

Fair use is the most commonly used exception to the need to seek permission for use of another’s work. The fair use doctrine is contained in Section 107 of the copyright law and requires the user to weigh the four factors below. (details on chart on page 3)

- Purpose and character of the use;
- Nature of the copyrighted work;
- Amount used; and
- Effect upon the market.

General Rules for Fair Use

Only students in the class (or other qualified persons such as TAs) should have access to the materials.

- Access to the materials should be limited in time to the duration of the course.
- There should always be a clear relation between the instructor’s pedagogical purpose and the kind and amount of content involved.
- Full attribution to the author should be included.
- Students should receive a notice about copyright and their responsibilities and rights with respect to course content. This means including copyright language on the syllabus.

1 Copyright Term and the Public Domain in the U.S. for specific guidance
2012 Case Law Favors Universities on Fair Use

In *Cambridge University Press et al. v. Georgia State University* the judge, in considering electronic reserve use of non-fiction materials, issued a 350 page opinion May 11, 2012 which largely favored Georgia State University and likely frustrated Cambridge University Press. While the case is on appeal, the decision was carefully documented and is considered by many to be authoritative guidance.

- Use of the “heart of the work” use does not necessarily defeat a claim of fair use.
- Use over repeated semesters *does not* defeat fair use.
- Availability of a license does not on its own defeat a finding of fair use.
- As a general index, use of 10% of a book not divided into chapters (or with 9 or fewer chapters) is a fair use; and 1 chapter of a book with 10 or more chapters is a fair use, but these are not meant to be rigid limits.

In *Authors Guild Inc. et al. v. Hathi Trust et al.*, decided October 10, 2012, the U.S. District Court (Southern District of New York) held against the plaintiffs, Authors Guild, and individual authors, and for the defendants, the universities of Wisconsin, Michigan, Indiana, California, and Cornell University along with HathiTrust. The universities had shared digital copies of books in their libraries with the HathiTrust Mass Digitization project for the purpose of research and also to allow those with visual disabilities to access the works. The judge found this to be a fair use, describing the defendants’ Mass Digitization Project as an “invaluable contribution to the progress of science and cultivation of the arts that at the same time effectuates the ideals espoused by the ADA,” the Americans with Disabilities Act. Note the entire books were copied and fair use was still found.
# GUIDE TO FAIR USE OF COPYRIGHTED MATERIAL

1. **The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes.**

<table>
<thead>
<tr>
<th>Likely to be a fair use</th>
<th>Favorable to fair use</th>
<th>Unfavorable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonprofit, teaching, scholarship/research, criticism, commentary, academic publishers. Transformative use (i.e. repurposes work for new audience). See best practices guides.</td>
<td>Parody, personal.</td>
<td>For-profit use.</td>
</tr>
</tbody>
</table>

2. **The nature of the copyrighted work. (generally given less weight by courts).** Factual works are granted less protection than primarily creative works.

<table>
<thead>
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<th>Unfavorable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factual (e.g. news report or scientific article).</td>
<td>A mixture of factual and imaginative.</td>
<td>Imaginative or consumable materials (e.g., workbooks, answer sheets).</td>
</tr>
</tbody>
</table>

3. **How much of the work will be used in relation to the copyrighted work as a whole measured both quantitatively and qualitatively.**

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>~ 10% of a book undivided into chapters, or for a book that contains nine or fewer chapters. One chapter of a ten or more chapter book.</td>
<td>Substantial amount of work unless mitigating factors or transformative use.</td>
</tr>
</tbody>
</table>

4. **The effect one’s proposed use of the work might have on the market of the copyrighted work.**

<table>
<thead>
<tr>
<th>Likely to be a fair use</th>
<th>Unfavorable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original is out of print or unavailable. Little/no demand for work. Posted on Internet by © owner. Use common sense.</td>
<td>Use substitutes for purchase of the original. Use substantially more than 10%.</td>
</tr>
</tbody>
</table>

*Chart adopted from University of Rochester and used with permission. CUA updated October 2012.*
Student Record Privacy

“Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops' ” (The Right to Privacy” by Samuel D. Warren and future Supreme Court Justice Louis Brandeis, 1890).

Over a century later, much has changed, but privacy still has currency as something "essential to the individual." Students have the right to keep their education records private, as set forth in federal law, The Family Educational Rights and Privacy Act, or FERPA.

- Education records are those documents directly related to a student and maintained by the University. This includes grades, transcripts, exams, class schedules, surveys, judicial records, and all other records maintained, in any format, that contain personally identifiable information about a student.

- FERPA allows disclosure to a school official with a legitimate educational interest, that is, the information is needed to perform one's job. This could be a professor giving information about a student’s mental health to the Dean of Students, or a TA sending grades to Enrollment Services.

- FERPA specifically allows disclosures without prior written consent in order to address emergencies. The Department of Public Safety, trained medical personnel, and parents are appropriate parties to whom information may be disclosed under this exception.

- Directory information such as campus or home address, email, and major may be disclosed to anyone, as long as the student has not placed a hold on release of that information. Note that there is no requirement to disclose directory information, so discretion should be used by anyone releasing directory information to an outside party. If in doubt, check with your Dean or Department Chair or Adriana Farella in Enrollment Services at farella@cua.edu.

- The law allows the institution the discretion to release a record (without consent) to a parent of a dependent student, as defined by the parent's tax return. At CUA the philosophy is that the student should be the one to share access to his/her record with the parent. The Parental Notification Policy lists the instances in which disclosure will (or may) be made by officials in Student Life. The law also contains exceptions where disclosure is specifically allowed regardless of dependent status, for example, violation of alcohol or drug rules or a health or safety emergency.

Assume records are protected and may not be disclosed unless you can articulate an exception listed above or in The CUA Student Records Policy. Take care not to send out confidential information to more than one recipient by email. Please read the Student Record Policy at http://policies.cua.edu/studentlife/studentrecordsfull.cfm and take the FERPA training at http://humanresources.cua.edu/training/index.cfm.
Contracts

Failure to follow the proper procedure on contracts could leave you on the hook for payment of the purchase. Spending decisions and mission decisions reside with the University and that is why signatory authority is limited to a very few authorized agents of the University. The Contract Approval and Signature Authority Policy is mandatory reading for all faculty. See (http://policies.cua.edu/finance/finance/Contracts/Contract.cfm). The process for getting a contract approved is described at http://counsel.cua.edu/cuaspecific/contractreview/.

THREE SIMPLE RULES:

1. You are not authorized to sign a contract on behalf of the University unless you have been delegated signatory authority in writing by the President or Provost or Treasurer.
2. All contracts must be vetted by the Office of General Counsel prior to being signed.
3. All business contracts require the Business Contract Routing form.

Please contact the Office of General Counsel at tel. (202) 319-5142 with any contract questions.

Political Activity Guidelines

In an election season it is important to remember the University is a tax exempt organization and thus subject to a number of rules with regard to legislative and political activities. Most importantly, the University may not endorse a particular candidate for office, nor may University funds be used to participate in or intervene in the political campaign of a candidate for public office. Appearance of candidates on campus is allowable for educational or informational talks, as long as the same opportunity is extended to all candidates. Please check with Public Affairs or the President’s Office before extending an invitation to a speaker if you have any reason to believe there may be either a mission issue or a political activity issue.


Hiring/Employment

Schools planning to hire staff (non-faculty) employees need to adhere to the hiring steps and requirements set forth in the Employment Practices and Procedures policy. The first step is to contact the Director of Employment, Ivonne Ambrozkiewicz, or the Associate Vice President for Human Resources, Christine Sportes. Either person can talk you through the process from completing the personnel requisition form to ensuring the necessary background investigation process is completed. Please do not promise job candidates Green Cards. See the Categories of Employment policy and the Definition of Employment Status policy for further information regarding the types of staff employment positions. The Office of Human Resources can be reached at tel. (202) 319-5050 with staff hiring questions.
Other Policies of Interest to Faculty

All University wide policies are posted online at http://policies.cua.edu. The policy page includes a link to the Faculty Handbook. Part III is currently being revised. Updated policies of interest to faculty include the following:

**Tuition Exchange (new 2012)**
The tuition exchange portion of the policy was revised to change the eligibility requirement from four years of University service to two years of service by the first day of the University education for the qualified dependent.

**Conflict Of Interest-Research (new 2012)**
This policy was revised to meet new Public Health Service Regulations. If you receive externally funded research money please read this updated policy.

**Indemnification of Employees (new 2012)**
Employees seeking indemnification must give timely notice of any legal issues that arise to the Office of General Counsel. Signing a contract without following the contract policy may preclude indemnification under this policy.

**Accommodations at University Events**
The University must make all public events accessible. The procedure for notices in announcements and naming a contact is described in this policy.

**Recording Classroom Lectures**
Recording of classroom lectures is prohibited unless advance written permission is obtained from the instructor and any guest presenter(s). An instructor may provide such permission to an entire class as part of the course syllabus or other written description of a course. Students who require recording or other adaptations of lectures as a reasonable accommodation for a disability should contact the Office of Disability Support Services (DSS) in advance of the lecture in order to obtain permission for the recording.

**Independent Contractor (new 2012)**
Independent contractor or consultant status for services must be approved by the Office of General Counsel before the performance of services. This policy applies to all University faculty and staff who engage service providers. Proper determination of whether a service provider is an employee of the University or an independent contractor or consultant is necessary so that the University complies with the requirements of The Fair Labor Standards Act, Immigration and Naturalization Service regulations and statutes regarding income tax withholding, unemployment insurance taxes, and Social Security and Medicare taxes. After-the-fact contracts can create problems for the University.

**Honoraria**
All honoraria require the approval of the School and the Provost or the Administrative Division. As a matter of tax law, honoraria should not be paid to University employees. Tax and immigration rules impose restrictions on paying honoraria to persons in the US on non-immigrant visas. Please contact Accounts Payable (Lisa David at 5854) in advance so the proper forms can be filled out before you invite the speaker.
**Sexual Misconduct Policy, Reporting and Support**

All teachers in DC, and this includes faculty, are required to make a report to either The Metropolitan Police Department or the DC Child and Family Services Agency if made aware of sexual abuse or assault of a minor (under age 18).

**Sexual Harassment**

A consensual dating or sexual relationship between a staff employee or a member of the faculty (including adjunct faculty) and a student or an employee that the staff/faculty directly supervises is prohibited when the staff/faculty has any current or foreseeable professional responsibility for the student or the employee. Any consensual dating or sexual relation between a staff or faculty member and an undergraduate is prohibited. Sexual harassment, a form of sex discrimination, detracts from a positive environment and is prohibited.

**Compliance**

The University’s [Compliance and Ethics Program](http://counsel.cua.edu/faculty/index.cfm) is another resource for helping you navigate the complex higher education regulatory environment. If you have questions about University-wide policies or whether or not a particular action is ethical contact Vin Lacovara, University Compliance and Privacy Officer, at tel. (202) 319-6170 or [lacovara@cua.edu](mailto:lacovara@cua.edu). If you suspect something is not right, report it to your supervisor, to the Compliance and Privacy Officer, or anonymously through the University’s [Compliance and Ethics Helpline](http://counsel.cua.edu/faculty/index.cfm). All good faith reports can be made free from fear of retaliation per the University's [Non-Retaliation Policy](http://counsel.cua.edu/faculty/index.cfm).

**Contacting OGC**

The lawyers in the Office of General Counsel are here to assist University faculty and staff with questions on the laws and regulations and University policies. If you have a question about the law as it relates to your job that is not answered in a policy or on the [Office of General Counsel web page](http://counsel.cua.edu/faculty/index.cfm), please feel free to contact us at tel. (202)-319-5142.

**General Topics of Interest to Faculty**

[http://counsel.cua.edu/faculty/index.cfm](http://counsel.cua.edu/faculty/index.cfm)

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