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## Copyright Compliance and Use Policy



### Copyright Compliance and Use Policy

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Policy Owner: Research and Instruction Librarian-Pius Library/Miriam Joseph

Policy Contact: Research and Instruction Librarian-Pius Library/Miriam Joseph

## 1.0 Reason for Policy

The purpose of this policy is to inform and guide University faculty, student, staff, and administrator activities related to the legal and ethical use of copyright protected materials in accordance with U.S. law. All persons covered by this policy are also expected to comply with the copyright laws of other countries, which may differ from U.S. copyright law.

### Introduction

In the pursuit of its institutional mission, Saint Louis University seeks excellence in the fulfillment of its corporate purposes of teaching, research, health care, and service to the community. To this end, the University encourages its faculty, students, staff, and administrators to take full advantage of their creative

rights under law. At the same time, its faculty, students, staff, and administrators are expected to respect the copyright protected materials of others in compliance with U.S. and international copyright law and proprietary license agreements. Copyright is the form of intellectual property that protects original works of authorship that are fixed in a tangible medium of expression; it is universally applicable to materials in all formats.

This policy provides a brief summary of U.S. copyright law; descriptions of what is and is not protected by copyright; explanations of copyright duration, public domain, and fair use; and compliance procedures including obtaining permissions and addressing infringement. Additional policies related to specific aspects of copyright (e.g., copyright ownership) as well as educational information concerning a variety of copyright-related topics (e.g., codes of best practices) may be found at the Google site link here **(NOTE: THE COPYRIGHT GOOGLE SITE IS UNDER CONSTRUCTION.)**

## ***What Is and Is Not Protected by Copyright***

Copyright protects original works of authorship that are fixed in a tangible medium of expression. These include, but are not limited to, literary, musical, dramatic, pictorial, graphic, sculptural, and architectural works, as well as motion pictures, sound recordings, video games, and software code.

Works ineligible for copyright protection include, among others, works that have not been fixed in a tangible form of expression (for example, speeches or performances that have not been written or recorded), titles, names, short phrases, facts, ideas, procedures, concepts, and works consisting entirely of information that is common property (such as standard calendars, tape measures, and height and weight charts). Federal government documents are also generally not protected by copyright and are in the public domain. However, if the government hires a private entity to create the work, that entity may retain the copyright.

It is important to note that although some material may not be protected by copyright, it may in fact enjoy patent or trademark protection. Per the U.S. Copyright Office, "...a patent protects inventions or discoveries. Ideas and discoveries are not protected by the copyright law, although the way in which they are expressed may be. A trademark protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others."

## ***Copyright Ownership***

The author of an original work owns the copyright in the work, but rights of copyright can be transferred.

Transfer of copyright can be in whole or in part, and can be exclusive or nonexclusive. See SLU [Copyright Ownership Policy](#).

## ***Duration of Copyright Protection***

Copyright protection begins automatically upon fixation of a work in a tangible medium of expression. While the use of a copyright notice may provide certain legal benefits, no publication, registration, or copyright symbol is required under current copyright law, so the absence of a copyright notice (e.g., ©2014 Name or Copyright 2014 Name) does not imply that a work is unprotected. For works created after 1977, the term of protection ordinarily lasts for the life of the author plus an additional 70 years. Where a "joint work" was prepared by two or more authors, the term lasts for 70 years after the last surviving author's death. For works

made for hire, and for anonymous and pseudonymous works, the duration is 95 years from publication or 120 years from creation, whichever is shorter (per the *Sonny Bono Copyright Term Extension Act of 1998*).

## 2.0 Policy Statement

It is the policy of Saint Louis University to adhere to and promote the observance of US copyright laws and for its faculty, students, staff, and administrators to make appropriate use of copyrighted works for academic and other University-related purposes. Saint Louis University faculty, students, staff, and administrators are themselves responsible for determining whether a work is in the public domain, whether a use may be considered fair use under the law and, if required, ensuring that appropriate permissions are obtained.

## 3.0 Scope

This policy applies to all operating units of Saint Louis University and Saint Louis University-Madrid including all faculty, staff, students, volunteers and other workforce members not otherwise identified.

## 4.0 Procedures

This section identifies the general procedures necessary to determine whether or not permission should be obtained to use a given work. To use a work without permission it must be in either the public domain or a fair use, as defined by copyright law. To use a work with permission requires contacting the copyright owner.

### ***Public Domain Determination***

A work published in the United States is in the "public domain" if it is no longer under copyright protection or if it failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright owner. Copyright law defines the requirements necessary to establish that a work is in the public domain.

Copyright protection for works created prior to 1977 and not in the public domain depends on whether certain registration and renewal procedures were followed. To determine whether such works are protected, it may be helpful to use a public domain chart (see the *Resources* section of the SLU Copyright Google site). If a work is not in the public domain or it is not possible to determine whether it is in the public domain, a fair use analysis is necessary to justify using it without permission.

### ***Fair Use Determination***

Fair use is an important limitation on the exclusive rights of copyright owners found in Section 107 of the *1976 Copyright Act*. Fair use allows a copyrighted work to be used for purposes such as criticism, comment, news reporting, teaching, scholarship, or research without prior permission from or payment to the rights owner.

However, just because a given use is educational does not automatically mean the use is fair. Each of the following four factors must be considered to determine whether a particular use is a fair use: (1) the purpose

and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work (factual vs. fictional, published vs. unpublished); (3) the amount and substantiality of the portion used in relation to the work as a whole (measured both quantitatively and qualitatively); and (4) the effect of the use upon the potential market for or value of the copyrighted work.

When courts evaluate fair use, they often emphasize the purpose and character of the use in terms of its transformativeness. Transformative uses are secondary uses that are innovative, add value, produce new meaning, or repurpose or recontextualize the original use. Many educational uses are transformative, and transformative uses of copyrighted works are more likely to be considered fair.

A fair-use analysis is a fact-specific balancing test, made on a case-by-case basis, in which all four factors and the possibility of transformative use are weighed.

While a fair use of copyrighted material may be posited following the application of the four-factor analysis described in Section 107 of the Copyright Act, only a court of law can make a "definitive" determination of whether a use is a fair use.

Courts have increasingly recognized the application of codes of best practice for fair use that have been established by professional organizations or official bodies. These written guidelines aid in the understanding and application of ethical and legal standards in a given context, e.g., *Code of Best Practices in Fair Use for Scholarly Research in Communication*.

It is important to maintain documentation of all fair use analyses as the user of the work bears the burden of justifying the use as a fair use should it be questioned. When a fair use for copyrighted material cannot be established, permission for its use must be sought.

## **Permissions**

To obtain permission to use a copyrighted work, the current copyright owner of that work must be contacted and the request made in written form (see *Resources* section of the SLU copyright Google site).

## **5.0 Sanctions**

Copyright infringement is the act of reproducing, distributing, performing, publicly displaying or making into a derivative work a work without the permission of the copyright owner. Copyright infringement is a violation of law and may result in civil and/or criminal liability on the infringer and/or the institution. Liability for acts of copyright infringement and the responsibility for defending against claims of infringement is solely that of the individual who has committed the infringing act.

Individuals who fail to comply with this policy and the procedures associated with it may be subject to disciplinary actions guided by the University's *Staff Performance Management Policy*, *SLU Faculty Manual* (*St. Louis Campus*), or *Student Handbook*. Non-compliance with this policy may result in disciplinary action, up to and including separation from the University. Staff members who are members of University-recognized bargaining units will be disciplined for violations of this policy in accordance with the relevant disciplinary provisions set forth in the agreements covering their bargaining units.

## 6.0 Responsibilities

All individuals identified in Section 3.0 are expected to comply with this policy and related procedures.

## 7.0 References

### External Resources Including But Not Limited to:

The following text identifies federal legislation pertinent to a basic understanding of copyright compliance and use.

#### ***Background***

Copyright law in the United States is influenced by 16<sup>th</sup> Century English law and rests in [Article 1, Section 8 of the United States Constitution](#).

"The Congress shall have power . . . To promote the progress of **science and useful arts**, by securing for **limited times** to authors and inventors the exclusive right to their respective writings and discoveries; ..."

#### ***Authors and Creators' Exclusive Rights in Copyrighted Works***

The rights of authors and creators are delineated in [Title 17, Chapter 1 of the United States Code, Section 106](#).

Subject to limitations stated in Sections 107-122, the owner of a copyrighted work has exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

#### ***Use of Copyrighted Materials***

The use of copyrighted materials is governed by the [Copyright Act of 1976](#) and its amendments and codified in Title 17, Chapter 1 of the United States Code Sections 101-122. Major acts of Congress modifying the 1976

act that have implications for educational uses with importance for higher education are

[Digital Millennium Copyright Act of 1998](#) modified **17 U.S. Code 117 - Title I** (anti-circumvention), **Title II** (liability for online copyright infringement); **Title III** (computer maintenance and repair); and **Title IV** (various provisions including distance education and exceptions for non-profit libraries and archives).

[Sonny Bono Copyright Term Extension Act of 1998](#) modified **17 U.S. Code Chapter 3 – Duration of copyright** to extend the protected term to the life of the author or creator plus 70 years. The protected term varies depending upon when a work was published.

[TEACH Act of 2002](#) (see §13301 on p.154) added [17 U.S. Code §110\(2\)](#) that sets out conditions for displays and performances in synchronous distance education (i.e., comparable to face-to-face classroom teaching).

## University Policies Including But Not Limited To:

[Appropriate Use Policy](#)

[Copyright Ownership Policy](#)

## 8.0 Definitions

**8.1 Author:** The creator of a work. The author is also the owner of copyright unless there is a written agreement by which the author assigns the copyright to another person or entity, such as a publisher. In cases of works made for hire, the employer or commissioning party is considered to be the author. See [Circular 9, Work-Made-For-Hire Under the 1976 Copyright Act](#). Source: [Copyright.gov - Definitions](#). See also: SLU [Copyright Ownership Policy](#)

**8.2 Copyright :** A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" means that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright. Source: [U.S. Copyright Office Definitions](#).

**8.3 Copyright notice:** A notice that informs users of the underlying claim to copyright ownership in a published work. The copyright notice usually consists of three elements. They are the "c" in a circle (©) or the word "Copyright", the year of first publication, and the name of the owner of copyright.

**8.4 Copyright owner:** The person or entity who owns any one of the exclusive rights comprised in a copyright. Source: [17 U.S. Code §101 - Definitions](#). See also: SLU [Copyright Ownership Policy](#)

**8.5 Derivative work:** A work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a derivative work. Source: [17 U.S. Code §101 - Definitions](#).

**8.6 Display:** The showing of a copy of a work, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially. Source: [17U.S. Code §101 - Definitions](#)

**8.7 Exclusive rights:** The rights granted to the copyright owner under copyright law, which are the exclusive right to do and to authorize any of the following:

- A. To reproduce the work
- B. To prepare derivative works
- C. To distribute copies or phonorecords of the work to the public by sale, rental, lease, or lending
- D. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly
- E. In the case of literary, musical, dramatic, and choreographic works, pantomimes, 7 and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly
- F. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Source: [17 U.S. Code §106](#).

**8.8 Fair use:** A defense against a claim of copyright infringement, which allows for, in certain circumstances, the use of a copyrighted work without permission from the copyright owner. See [17 U.S. Code §107](#).

**8.9 Fixed in a tangible medium:** The embodiment of a work in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is fixed if a fixation of the work is being made simultaneously with its transmission. Source: [17 U.S. Code §101 – Definitions](#).

**8.10 License:** A contract giving written permission, for a specified time, to a person or entity to use a copyrighted work.

**8.11 Phonorecord:** Material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed. Source: [17 U.S. Code §101 – Definitions](#).

**8.12 Public domain:** The state of belonging or being available to the public as a whole, and therefore not subject to copyright.

**8.13 Public performance:** (1) The performance or display of a work at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) the transmission or other communication of a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. Source: [17 U.S. Code §101 – Definitions](#).

**8.14 Publish/Publication:** The distribution of copies or phonorecords of the work to the public by sale or

other transfer of ownership, or by rental, lease, or lending. Publication also includes offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display. A public performance or display of a work does not of itself constitute publication. Source: [17 U.S. Code §101 – Definitions](#).

**8.15 Sound Recording:** A work that results from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects in which they are embodied. Source: [17 U.S. Code §101 – Definitions](#).

**8.16 Transformative use:** A use of a work different from that originally intended by the copyright owner.

**8.17 Work:** Under copyright law, an original work of authorship law fixed in a tangible medium of expression.

**8.18 Work Made for Hire:** A work prepared by an employee within the scope of his or her employment or a work specially ordered or commissioned in certain specified circumstances. When a work qualifies as a work made for hire, the employer, or commissioning party, is considered to be the author. See [Circular 9, Work-Made-For-Hire Under the 1976 Copyright Act](#). Source: [Copyright.gov - Definitions](#). See also: SLU [Copyright Ownership Policy](#).

## 9.0 History

This is a new policy.

### Attachments

No Attachments

### Approval Signatures

Approver	Date
Michael Reeves	pending
Miriam Joseph: PhD	pending
Michael Reeves	3/6/2020

### Applicability

SLUCare, Saint Louis University