



Ohio Administrative Code

Rule 3357:15-13-34 General copyright guidelines.

Effective: June 5, 2023

These guidelines are intended to assist the faculty, administration, staff, and students of Stark state college in understanding and complying with the Copyright Act of 1976 (Title 17, United States Code) and the Digital Millennium Copyright Act of 1998. While some areas of the copyright law are clear, there are some portions which remain open to legal and judicial interpretation. For this reason, these guidelines will be periodically updated.

(A) Definition of copyright. Copyright is the 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, sound recordings, architectural works, motion pictures, and other audiovisual creations. Duration of copyright varies depending on many variables including authorship, ownership, and type of work. "Copyright" literally means the right to copy, but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work which includes:

(1) The right to reproduce the copyrighted work.

(2) The right to prepare derivative works.

(3) The right to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.

(4) The right to perform or display the copyrighted work publicly.

(B) Legal framework for copyright. Article I, Section 8, Constitution of the United States provides the basis for the concept of copyright. It states as follows: "The Congress shall have the 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." The Copyright Act is found in Title 17 of the United States Code.



(C) Subject matter of copyright. Copyright protection exists for original works of authorship from the moment they are fixed in any tangible medium of expression, not known or later developed, from which the works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Copyright does not have to be visibly evident for an item to be protected under the Copyright Act. Copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

(D) Duration of copyright.

(1) For works created on or after January 1, 1978, copyright begins when the work is first fixed in a tangible medium of expression i.e., when it is first written down or recorded and extends through the life of the author plus seventy years. For a "joint work prepared by two or more authors who did not work for hire," the term lasts for seventy years after the last surviving author's death. For works made for hire and anonymous and pseudonymous works, the duration of copyright is 95 years from first publication or 120 years from creation, whichever is shorter.

(2) For works created prior to January 1, 1978, there are two safe ways to interpret copyrights:

(a) Treat any pre-1978 copyright the same way as works published on or after January 1, 1978: Life plus 70, 95, or 120 years, depending on the nature of authorship. However, the law specifies that in no case would copyright in a work in this category have expired before December 31, 2002. In addition, if a work in this category was published before that date, the term extends another 45 years, through the end of 2047, or

(b) Contact the publisher, if still in existence, or the U.S. copyright office to identify the copyright owner so that continued vitality to the copyright can be determined.

(E) Compliance with copyright law. No employee or agent of Stark state college shall knowingly infringe upon the copyrights of another.

(F) Permission. Employees shall seek and obtain the permission of the copyright owner prior to



making use of copyrighted materials unless one of the following exemptions pertains:

(1) The work was never copyrighted. (This is often difficult to ascertain since recent amendments no longer make it mandatory to place the copyright notice on copyrighted works.)

(2) The copyright has expired. These works are part of the public domain and may be freely copied.

(3) The work lies in the public domain. Examples of works in the public domain are works which were never copyrighted, works where the copyright has expired, and works originally published by the U.S. government.

(4) The copying and/or distribution fall within "fair use."

(5) The copying and /or distribution fall under certain library or archive copying.

(G) Fair use. The only substantial exception to the rule that only copyright holders may distribute copyrighted material is the judicial doctrine of "fair use." Use of a copyrighted work "for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" (17 USC 107) is generally considered fair use. Fair use does not extend to extensive quotations and may not adversely affect the commercial market for the work in question. In determining whether a work in a particular case constitutes fair use, the factors to be considered shall include the following:

(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.

(3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

(4) The effect of the use upon the potential market for or value of the copyrighted work.

(H) Obtaining permission or licenses. If use does not fall under "fair use," permission must be



obtained. Repeated use or republication is not considered "fair use." Permission must be obtained or royalties must be paid for such use of copyrighted works. While the budget funds may be limited, the college does not condone any violation of law simply because that violation saves the taxpayers' money. Accordingly, a good faith effort must be made to obtain permission to use copyrighted material that falls outside of the doctrine of "fair use."

(I) Requests for permission. There are two ways to obtain permission to use copyrighted material. You may either contact the copyright holder directly, or you may use a rights clearinghouse. The permission process is not instantaneous. Allow one-three months for requests to be processed. Whether you are contacting a rights holder directly or using a clearinghouse, you will need to have the following information:

- (1) Include an exact description/citation of the work to be used or copied: Title, author and/or editor, and edition of material to be duplicated including page numbers, chapters, and if possible a photocopy of the material to be duplicated.
- (2) Include an exact description of what rights you are requesting, how you plan to use the work, the form of distribution (classroom, online class, newsletter, etc.), whether or not the material will be sold, and reproduction medium (photocopy, digital file, etc.).
- (3) You must request and pay for, if applicable, each type of right you request. For example, if you are granted the right to use an image in a PowerPoint presentation, it doesn't mean you have the right to use that image in a paper you are writing unless you have also been granted that right.
- (4) Whenever possible, requests for permission should be in writing.
- (5) All requests shall identify the user as Stark state college.
- (6) Permission to use copyrighted material must be in writing.
- (7) Questions about copyright at Stark state college should be directed to the director of library services.



(J) Digital media and the Digital Millennium Copyright Act

(1) Copyright law applies to digital resources as well as to conventional paper works. Any distribution of copyrighted digital files--music, movies, text or software--is a violation of federal law. (See the policy on use of college computing resources, rule 3357:15-15-05 of the Administrative Code.) Placing media files in a location where they are available to other Internet users counts as distribution, as does providing copies to friends. It is also illegal to attempt to subvert copyright protection mechanisms (17 USC 1201). Willful infringement for commercial advantage or private gain constitutes a criminal offense.

(2) Stark state college encourages the use of legal online resources. A comprehensive list of legal sources for online content and downloading may be found through the "EDUCAUSE" website at: <http://www.educause.edu/legalcontent>.

(3) The Digital Millennium Copyright Act (DMCA), enacted in 1998, provides protection for copyrighted material in digital form. The DMCA requires that online service providers--including colleges and universities--follow a particular set of procedures in resolving copyright violation claims. Stark state college has implemented these DMCA-mandated procedures. (For more information, see report a copyright infringement below.) The college is also taking active measures to educate users about the provisions of copyright law and encourage compliance with it.

(K) The Technology, Education and Copyright Harmonization Act (TEACH) was signed into law in October 2002. The TEACH Act amends Sections 110(2) and 112 of the Copyright Act of 1976 to give instructors at accredited nonprofit educational institutions greater flexibility to use third party copyrighted works in online course delivery. The bill permits the display and performance of virtually all types of works during online instruction without the consent of the copyright owner, provided that:

(1) The online instructions at an eligible institution are mediated by an instructor;

(2) The transmission of the material is intended only for receipt by students enrolled in the course, regardless of where the students are physically located;



(3) The institution employs measures to prevent "retention of the work in accessible form by recipients of the transmission for longer than the class session;"

(4) The institution employs measures that limit the transmission of the material to students enrolled in the particular course and precludes unauthorized student retention and/or downstream redistribution "to the extent technologically feasible;" and

(5) use of the material is clearly for educational, not entertainment purposes.

(L) Penalties for copyright infringement

If it comes to the attention of the college that an individual is using Stark state college computer equipment and/or network access to violate copyright law, Stark state college will take action to stop such activities, including removing network access.

In addition, violations of copyright law can lead to criminal charges and civil penalties.

Report a copyright infringement

(1) To report copyright infringements on servers located at Stark state college, please notify:

Director of library services Stark state college 6200 Frank ave. NW North Canton, OH 44720 Phone:
(330) 494-6170

(2) Director of library services is the agent designated under the Digital Millennium Copyright Act, P.L. 105-304.

(3) Director of library services will comply with the "Notice and Take Down" provisions of the DMCA by removing the material in question and informing the individual user of the complaint. Users must file a counter-notice if they wish to make the material available again.

(M) Copyright and faculty ownership of intellectual property, compensation, royalties, and patents.



Copyright and faculty ownership of intellectual property is determined based on use of college resources as defined in this paragraph. Compensation for course/program development is based on category and level as identified in this paragraph.

(1) Category A: Employees shall have sole rights of ownership and disposition of copyrightable material and patents generated by their own individual initiative, provided there is no use of college personnel, facilities, or resources ("category A materials"). However, employees hereby grant the college a fully paid up, nonexclusive license to reproduce, distribute, display, or otherwise use category A materials for educational purposes only. The employee has sole rights to license category A materials and shall retain all royalties or profits therefrom.

(2) Category B: Employees and the college shall share the ownership and disposition of copyrightable material and patentable discoveries or inventions generated where there is approved use of college personnel or facilities ("category B materials"). College personnel or facilities include, but are not limited to, released time, administrative assistance, financial assistance (such as student workers), or college services, equipment, or building. Both parties must agree to any commercial licensing arrangement unless otherwise stated in the course/program development agreement. Division of royalties under these circumstances shall be seventy per cent to the employee and thirty per cent to the college unless other written agreements are made prior to the initiation of the work.

(3) Category C: Copyrights and patents developed from projects undertaken by an employee pursuant to an agreement with the college whereby the college commits substantial resources such as the use of other personnel, facilities, compensation, and release time ("category C materials"). Employee hereby assigns to college all rights and title, including all copyright rights, in any and all category C materials. The college has sole rights to license category C materials and shall retain all royalties and profits therefrom.

(4) Grants: Rights to copyrightable material and patents developed as a result of work supported partially or totally by an outside agency or sponsor through a contract or grant shall be disposed of in accordance with the terms of the contract or grant. Prior to the employee accepting sponsored research or developmental assignments, the college will be consulted and must approve the contract or grant and the details of the project, division of any resulting copyrights or patents, compensation, and the division of royalties.



(5) Employment of the author: In the case where the author is no longer employed at the college, the college retains the right to use the category B and category C course material and also grants the author the right for the author to use the work at another educational institution at which the author is employed so long as that institution is outside the extended service district of the college. The extended service district of the college is defined as Stark county, Summit county, and the adjacent surrounding counties. In the case where the author is no longer employed at the college, the commercial license for the material is defined by the category in the course/program development agreement.

(6) Compensation of the author: In consideration for the following, the author will develop the category B or category C course with any remuneration to be paid upon successful completion of the deliverable of the project.

(7) Transfer of Ownership of Copyright (See Title 17 United States Code, Section 204)

(a) Copyright must be deliberately transferred.

(b) Any transfer of ownership must be both in writing and signed.

(i) A unilaterally imposed institutional policy cannot legally take away the author's copyright ownership of work.

(ii) However, if the author has signed an employment contract yielding copyright to the work, or signed a faculty handbook indicating acceptance of the policies within, such a signed document could be interpreted as a contract and might constitute a valid transfer of rights.