

Welcome to the Kamehameha Schools Legal Group

Copyright

Overview

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. It is the policy of KS to use and protect all copyrighted materials owned by or licensed to KS.

[KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) provides a summary of copyright principles and guidelines for use of copyrighted materials.

The Rights of an Owner of Copyright

Except as authorized by law or by the "Fair Use" doctrine, federal Copyright laws generally give the owner of copyright the exclusive right to do and to authorize others to do the following:

1. **Reproduction:** Copying the work, in any form or medium.
2. **Preparation of Derivative Works:** Preparing a "derivative work," that is, any work based on or derived from the copyrighted work, in any form or medium.
3. **Distribution:** Distributing copies of the work to the public by sale, gift, rental, lease, or lending.
4. **Public Performance:** Performing the work publicly (for example, by acting out a play; running a movie or videotape; or broadcasting a film, videotape, or live performance).
5. **Public Display:** Displaying the work publicly, directly or by telecommunication (for example, by hanging a work of art in a gallery or transmitting its image by television).

Fair Use

Fair Use is a legal doctrine that permits certain limited uses of copyrighted works that otherwise would amount to copyright infringement. Please refer to the Summary of Basic Copyright Principles under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding Fair Use.

Copyrightable Works

Copyright protects "original works of authorship" that are fixed in a tangible form of expression (Copyrightable Works). Copyrightable Works include the following categories:

- 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
- architectural works

Copyright Protection

There are three ways to determine if a work is under copyright protection: (1) examine a copy of the work for a copyright notice, place and date of publication, or the author or publisher; (2) conduct a self search the Copyright office or (3) Request a search by the Copyright Office. Please refer to the Summary of Basic Copyright Principles under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding copyrighted work.

Copyright Infringement

Copyright Infringement is the violation of another's copyright and may lead to a lawsuit by the owner of the copyright against the violator. Penalties include: (1) monetary damages for both the copyright's owner's losses and the profits, if any, from the infringement; (2) statutory damages of up to \$20,000 per work infringed, or up to \$100,000 per work infringed if it can be shown that the infringement was made willfully; and (3) payment of the copyright owner's attorneys fees as well as their own. In addition, the copyright owner may obtain an injunction (court order) forbidding further infringement.

License Agreements

A License Agreement allows an individual to use a copyrighted work. License Agreements may permit uses generally prohibited under copyright law or may restrict uses that copyright law generally permits. Any questions regarding license agreement to which KS may be a party should be directed to the Vice President for Legal.

FAQs About General Copyright Principles

- 1. May I transfer copyrighted material from one medium to another (e.g., slides to CD-ROM, print media to electronic file, and the like)?**

The simplest answer is that "copying is copying," irrespective of the form or method. The transfer of copyrighted material from one media to another essentially involves the copying of copyrighted works; and in order for such copying to be allowable without permission of the copyright owner, the purpose would have to fall within a doctrine, a statutory exception, or some other special provision discussed in these procedures.

- 2. May I duplicate or modify copyrighted works through the use of electronic "authoring" software or other computer programs?**

Modification of any copyrighted material, by any means (either manually or electronically), is deemed to be

the preparation of a “derivative work.” As such, prior authorization by the copyright owner would be required. Additionally, with respect to pictorial works, there are the so-called “moral rights” of the author or artist, discussed in [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#), under Section F.3 “Problematic Issues with Copyrighted Pictorial and Graphic Works.”

Electronic Media

The general principles of copyright law apply to electronic communication, including use of materials found on the Internet. As a general rule, “Fair Use” guidelines also apply to electronic media. Please refer to the Guidelines for Use of Copyrighted Materials - Electronic Media including the Internet under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding electronic media.



FAQs About Electronic Media

1. I found a great article on the Internet. Can I copy it and mail it to all my colleagues?

Probably not. Making an electronic copy of an article is still making a “copy” of the article and may therefore still be a copyright violation. Courts have held that distributing photocopies of journal articles is a copyright violation, and it is likely courts would not change views on doing the same thing electronically. You may send an e-mail to your colleagues telling them about the article and why you found it interesting, and giving them a link to the site on the Internet. Providing links or Internet addresses generally has not been held to infringe copyright interests.

2. As long as we are not going to charge for copies, can't we make as many copies as we want as a “Fair Use” of the work?

Probably not. One of the things courts may consider in determining whether making a copy of copyrighted materials is Fair Use is whether it is for profit. But that is only one of four factors courts consider in determine whether an allegedly infringing work constitutes Fair Use. The Four Factors courts consider are: (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; and (4) the effect of the use upon the potential market for or value of the copyrighted work. So, the fact that you are not going to charge for copies is not enough, by itself, to make this a Fair Use of copyrighted materials. Note that if the TEACH Act is followed; a teacher can use any non-dramatic literary or musical work, and “reasonable and limited portions” of any other work, without seeking the permission of the copyright owner.

3. I've found some great pictures on the Internet! I've copied them to use on our web page. Isn't that OK since I found them on the Internet?

Probably not. Just because a picture is posted to the Internet, it is not automatically in the public domain. Often pictures are posted with the consent of the copyright owner. Even if they are not, the fact that someone else is infringing the owner's copyright by posting the picture to the Internet will not be a defense to your infringement if you copy the picture on your web page.

Photocopying

The general principles of copyright law apply to electronic communication, including use of materials found on the Internet. As a general rule, “Fair Use” guidelines also apply to electronic media. Please refer to the Guidelines for Use of Copyrighted Materials - Electronic Media including the Internet under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding electronic media.

Photocopying for Personal Use

Copying for personal use is generally prohibited. In some circumstances, "Fair Use" may permit limited copying of copyrighted materials. Please refer to Procedure Use of Copyrighted Materials – Photocopying of Written Materials under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding photocopies.

Photocopying for Distribution to Students

Copying for distribution to students is generally prohibited. The "Fair Use" guidelines allow multiple copies to be made for classroom use if specific requirements are satisfied. Please refer to the Guidelines for Use of Copyrighted Materials – Photocopying of Written Materials under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding photocopies.



FAQs About Photocopying

1. **Each week I copy from one to several of the leading articles from a particular journal. Is this "Fair Use?"**

No. Systematic and repeated copying from a single publication or from the works of a single author is not "Fair Use." In this case you should read the library's copies of the journal or get your own subscription.

Questions on Copying for Distribution to Students

2. **I use an anthology of short stories in my course on English-language literature. However the anthology does not contain a story that I would like to include in the course. The story is only four pages long, about 2,000 words, and there are thirty students in my course. May I copy it for them?**

Yes, as long as you satisfy the spontaneity and cumulative effect requirements and the terms of copying of the story to the guidelines set forth in Section B.2 "Copying for Distribution to Students" in the Guidelines for Photocopying and Use of Copyrighted Written Materials under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#). In adding a single story to the anthology, you are simply supplementing it, not creating a new anthology or preparing a substitute. However, if you recognized the need for the additional story in time to request and receive permission for copying, you should get permission.

3. **In my physics course, I would like to use a recent article published in a scientific journal. The journal masthead contains the following legend: "ALL RIGHTS RESERVED. NO PART OF THIS JOURNAL MAY BE REPRODUCED OR UTILIZED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR THE USE OF AN INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE PUBLISHER." May I copy the article for my students?**

As long as you have not accepted the publication on condition that you will abide by the legend, you may copy the article if your copying constitutes "Fair Use". Unless agreed to, such legends do not bind you and do not extend or diminish the rights of the publisher or other copyright holder. You have the same rights under the doctrine of "Fair Use" as if there were no such legend.

Questions on Copying for Library Use

4. **One of the copyrighted works in the library was badly damaged by a user. May the library make a**

replacement using another copy of the same work?

Only if the library "has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price." If a commercial replacement is available at a fair price, the library must buy one. Before making a photocopy the library should, at a minimum, make a reasonable effort to contact the author, publisher, named copyright holder, and all the usual commercial sources of the work to determine whether a replacement copy is available at a fair price. If a commercial replacement appears to be unavailable, the library should document its inquiries in case anyone later should question its right to make the replacement copy. The library then should retain the records of its inquiries for at least three years. In any event, the library should make sure that any copyright notice in the original is included in the replacement copy.

These principles apply to copies that are damaged, deteriorating, lost, or stolen. They also apply to every type of copyrighted work, including phonorecords, pictures, graphics, sculpture, movies, and other audiovisual works.

- 5. One of the books in the library, still under copyright, has about 20 of its 400 pages missing. May the library replace the missing pages with photocopies made from another copy of the same work in the library's collection?**

Probably yes. Copying so small a portion of the original work for this purpose probably would constitute "Fair Use." As the number of missing pages increases, however, the application of the "Fair Use" doctrine becomes uncertain. When large portions of a book are missing, the best procedure is to buy a new copy. Once a new copy is ordered, however, it should be permissible to repair the old one temporarily for circulation by using photocopies, as long as the old one is taken out of circulation and destroyed as soon as the commercial replacement copy arrives. The library should make sure that any copyright notice in the original is included in the repaired copy.

- 6. We have ordered a commercial replacement for our second copy of a book which was badly damaged while in circulation. The replacement copy will not arrive for two months, and there is great user demand for the work. May we make a replacement copy for temporary use by duplicating our first copy?**

Yes. Once the library has ordered a commercial replacement copy, it may prepare a temporary replacement (with a copy of any copyright notice) for circulation. As soon as the commercial replacement copy arrives, however, the library must remove the temporary replacement copy from circulation and destroy it. If the temporary replacement copy is lost or stolen, the library should not make another.

- 7. Our library contains an unpublished historical manuscript by the grandson of an early Hawaiian missionary. The manuscript is still under copyright, but is deteriorating due to age and the effects of humidity. May the library make a duplicate copy for preservation? May it provide a duplicate to the Library of Congress for its historical collection?**

The answer to both questions is "yes." A library may duplicate an unpublished work in its collection for preservation, security, or deposit for research use in another library open to the public. The library, however, may not make money by supplying such copies to other libraries. In any event, the library should include in all duplicates a special copyright notice indicating that the work is unpublished.

- 8. Users often request that the library provide them with copies of portions of copyrighted works. Under what circumstances may the library do so?**

The library may supply a user with a single copy of a portion of a copyrighted work under six conditions: The portion must be brief -- no more than one article or other contribution to a collective work, or a "small

part" of any other copyrighted work (this rule does not permit copying of sheet music, pictures, or graphics except for incidental illustrations of text, nor does it permit copying of sculpture, movies, or audiovisual works other than news programs).

The copy must become the property of the user.

The library must have had no notice that the copy is to be used for any purpose other than private study, scholarship, or research.

The library must use two copyright warning notices as required by the Copyright Office regulations, one displayed prominently at the place where orders are accepted and the other printed on its order form.

The copy made by the library must include a copyright notice.

Requests for copying the same material must be "isolated and unrelated" -- the library may not engage in "systematic" copying and must not have "substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies...of the same material."

The last requirement is difficult to interpret. However, it probably precludes library copying in response to "standing orders" by a teacher, department, school, or other unit (for example, a standing order for the major articles in three leading political journals each month). Similarly, it precludes any copying that has the purpose or effect of replacing a subscription or purchase.

9. Occasionally users ask the library to copy entire books or major works. Is this permissible?

Sometimes. The library may copy and provide to users an entire work or a "substantial part" of it if the work is not commercially available. All of the conditions for copying a portion of the work (see Question No. 8, above) must be satisfied, including the requirement under the first condition as to type of work, but excluding, of course, the brevity requirement. In addition, the library must have determined "on the basis of a reasonable investigation" that a copy of the work cannot be obtained at a fair price. Although the library may be responsible for making an unauthorized copy, the patron who requests the copy may be legally liable for inducing infringement by the library. Therefore before asking any library to make a photocopy of all or a substantial part of a work, a patron should, at a minimum, make a reasonable effort to contact the author, publisher, named copyright owner, and all the usual commercial sources of the work to determine whether a commercial copy is available at a fair price. If a commercial copy appears to be unavailable, the user should document his or her inquiries in case anyone later should question the right to make the copy. The library should provide patrons with information or forms to document their inquiries. The library should retain records of this documentation and of the copying for at least three years.

10. There is a coin-operated photocopier in our library. Normally use of this machine is unsupervised. Is our library or its personnel liable if users make unauthorized copies on this machine?

No. The library and its employees are not liable for infringing use of photocopiers by library users as long as library personnel do not suggest or participate in the infringement and as long as each machine displays a copyright warning notice in the form prescribed by the Copyright Office.

11. Occasionally library users ask about their rights and liabilities under the copyright law. What should library personnel tell them? Are they liable for copyright infringement if they use copying machines in the library?

Library personnel could incur legal liability if they attempt to render legal advice to users. The most that library personnel should say is that a work may be protected by copyright. (With respect to any computer software or videotapes that it lends, however, the library can and should warn users that unauthorized

copying and public performances are prohibited.) As for infringement, use of the library's copying machine neither expands a user's liability nor protects the user. The user's liability is the same as if he or she used a copying machine outside the library.

12. Our library has a large collection of sheet music still under copyright. May we make copies of musical works, in whole or in part, for users?

No. The statutory permission for making copies at the request of library users (see Questions Nos. 10 and 11, above) does not apply to sheet music. It also does not apply to pictures and graphics (other than incidental illustrations of text) or to movies or audiovisual works other than news programs.

13. Our library engages in interlibrary loan programs. May we make a copy of a work or a portion of it for a user at another library?

Yes. A library may copy portions of works or whole works in its collection under the conditions explained in Question Nos. 8 and 9, above, for its own users or for the users of other libraries. However, in providing copies for users at other libraries, the library may find it more difficult to be sure that it is not engaging in "systematic" photocopying, and that its copying does not have the purpose or effect of substituting for a purchase or subscription. Each library furnishing photocopies to other libraries' users should establish administrative procedures to monitor these conditions in its interlibrary loan programs as well as in its own services. Certain organizations of libraries, publishers, and authors have agreed upon guidelines for photocopying in interlibrary loan arrangements. The agreed guidelines appear in the Final Report of the National Commission on New Technological Uses of Copyrighted Works ("CONTU"), Library of Congress, July 31, 1978, at pages 54-55. Although these guidelines do not have the force of law, libraries should follow them in the absence of more reliable authority. A copy of the guidelines is available for examination at designated KS learning centers.

Music

Copyrighted Music

Music involves two types of copyrighted works: (1) The musical composition itself (the "musical work" or "sheet music"), and (2) Particular recorded arrangements of the music (called "sound recordings"). Generally the composer will own the rights to the musical composition and the performer (or producer) will own the rights to a particular recording of a composition. Please refer to the Guidelines for Use of Copyrighted Materials – Music under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding copyrighted musical works.

Recording Music

Recording music requires a license from the owner of copyright in the underlying musical work, usually the composer or music publisher.

Existing Recordings

Copying an existing recording will generally require a license from both the composer and the performer or producer of the particular recording of the composition.

FAQs About Music

- 1. I want to broadcast and/or record KS concerts such as the Song Contest, the Christmas Concert, or band and orchestra instrumental concerts. May I do so without violating the copyright laws?**

The first question would be, to what extent does the performance contain copyrighted works? If the performance is limited to original or un-copyrighted works, the copyright restrictions are obviously not applicable.

If the recording of the performance was used in a face-to-face classroom teaching activity, Federal Copyright Laws would exempt the performance from any copyright restrictions. On the other hand, if copies of the recording were sold to the public, whether in the KS bookstore or in a public retail store, prior permission from the owner of any copyrighted work included in the performance would have to be procured. If copyrighted works are involved, a public broadcast of an otherwise exempt public performance of copyrighted works, even if there is an audience present at the place of the performance, would void the exemption set forth under Federal Copyright Laws. In order to qualify for the classroom exemption under Federal Copyright Laws, all the following must be satisfied:

- **Face-to-face Teaching Activity:** The instructor and students must be in the same building or general area. Devices for amplifying sound and for projecting images may be used. This requirement does not include broadcasting and other transmissions from an outside location into classrooms.
- **Nonprofit Educational Institutions:** This classroom exemption is available only to nonprofit educational institutions, such as KS.
- **Performances Only By Instructors or Students:** Only performances by instructors or pupils are eligible for the classroom exemption. The term "instructors" is defined broadly to include guest lecturers if their instructional activities remain confined to classroom situations.
- **Performances Must Be in the Course of Teaching Activities:** The teaching activities must involve systematic instruction and, therefore, do not include performances given for the recreation or entertainment of the audience. Arguably, a performance of a musical performance by KS students and instructors can be integrated into a teaching activity.
- **The Classroom Must Be the Location of the Performance:** The performance must take place in a classroom or similar place devoted to instruction, including a gymnasium, a library, a workshop, or the stage of an auditorium, if it is used as a classroom for systematic instructional activities.

Thus, in summary, simultaneous broadcast of an otherwise exempt public performance voids any exemption under the copyright laws. Use of the recording may or may not violate the law depending on the nature of the use.

2. If I wish to broadcast a public performance of a copyrighted work, or if I want to record the performance and sell the recordings, from whom must I obtain permission?

Under copyright law, generally the writer of the music and the writer of the lyrics of a particular musical composition each acquire an undivided fifty percent interest in the entire copyright in that musical composition. To avoid confusion in the licensing of their musical composition, writers often enter into administration agreements which set forth the rights and obligations between the two writers in the exploitation of their musical work. Such administration agreements may sometimes require that each writer be paid his/her share of income directly from the user of the musical work. In addition, writers may also retain a "publisher" to administer their musical composition. Publishers are, among other things, responsible for collecting and accounting for income, negotiating and preparing licenses, providing promotional services, and introducing the musical composition to potential users.

A public performance, including broadcasting, of copyrighted works is distinguishable from the sale of

recordings, discussed below. If you intend to broadcast a performance of copyrighted works, you should contact the American Society of Composers, Authors, and Publishers (generally referred to as "ASCAP"), Broadcast Music, Inc. (generally referred to as "BMI"), or The Society of European Stage Authors and Composers (generally referred to as "SESAC"). These are the dominant performing rights societies, and writers of musical works generally affiliate themselves with one of these.

It is the responsibility of the particular performing rights society retained to collect royalties for nonexempt public performances of copyrighted musical compositions. If the writers have not affiliated themselves with a performing rights society, you will have to contact the writers directly.

If you intend to record a performance of copyrighted works with the intention of selling copies of the recording, you should determine if the writers have retained a publisher, and if so, contact the publisher to find out what you must do to get a license to use the copyrighted work and how much the fees would be.

If the writers have not retained a publisher, you will have to contact the writers directly; determine if the writers have executed an administration agreement between them because such an agreement will set forth their rights and responsibilities with respect to the musical work; you may have to get both writers to approve of certain uses or just get the approval of one writer; you may have to pay both writers their respective shares or just pay one writer. These issues would be covered in the administration agreement.

If the work has previously been recorded, you may have a statutory right to license the work at a set license fee. It is generally preferable, however, to negotiate a license directly with the copyright owners.

Videos & Movies

Videotapes and movies are normally protected by copyright. Authorization from the owner of the copyright is required to play a movie or videotape to the public or to copy a videotape. Please refer to the Guidelines for Use of Copyrighted Materials – Videotapes and Other Audiovisual Works under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding copyrighted videotapes and other audiovisual works.

FAQs About Videos and Movies

1. Occasionally, I see television programs that would be relevant to my political science course. May I videotape them and show them to my class?

Yes. The Public Broadcasting System, the commercial television networks, and certain (but not all) television producers and copyright holders have agreed to published "Fair Use" guidelines for the nonprofit, educational use of off-the-air videotaping. Under these published guidelines, you may record, play, retain, and use copies of off-the-air programs as follows:

- **Recording:** must be (1) simultaneous with broadcast transmission or cable retransmission; (2) by or at the request of an individual teacher for his or her own use; and (3) not regularly recorded in anticipation of requests.
- **Time of Playing:** must be only once, and may be repeated only once "when instructional reinforcement is necessary" -- all within ten school days after recording.
- **Place of Playing:** (1) classrooms; (2) similar places (such as gyms, libraries, and laboratories) "devoted to instruction within a single building, cluster, or campus"; and (3) homes of students receiving formalized instruction at home.
- **Editing:** Playing of less than all of a program is permitted, but alteration, combination with other

works, and creation of anthologies or collective works are prohibited.

- o **Destruction or Erasure:** must occur within 45 calendar days after recording.

After expiration of the ten-school-day period for playing the recordings, and before expiration of the 45-calendar day retention period, you may use the recordings for evaluation only, for example, to determine whether to license copies for repeated use in the curriculum.

However, you may not play the tapes for students after ten school days have passed, and you may not retain the recording in any form after 45 calendar days have passed. You must include the copyright notice from the original (if any) in all copies that you play.

2. May I duplicate commercially purchased video/audio tapes for classroom use?

Generally, the copying of commercially purchased video or audio tapes does not fall within the "off-the-air" recording discussed in Question No. 1. Such copying of prepared tapes for classroom use would be subject to the standard analysis under the four-part test for the "Fair Use" doctrine. Particular emphasis should be placed upon the analysis of Part 3, focusing upon the amount of the work utilized, and Part 4, dealing with the effect of the use upon the potential market for the work. The TEACH Act may also allow limited portions of an analog source, such as a videotape or a record album, to be used for mediated instructional activities. See discussion of the TEACH Act at Section C "Distance Learning Centers and the Teach Act" in Guidelines for Use of Copyrighted Materials – Electronic Media Including the Internet under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#).

Additional questions on the use of copyrighted video/audio tapes should be directed to the Legal Group.

3. Do I need to pay a licensing fee to show a movie to the boarders on Movie Night if KS owns the movie?

It depends. As use is for recreational purposes, it may not satisfy all four requirements for use under the "Fair Use" exemption, depending on the size of the audience, whether admission is charged, etc. If it falls outside the scope of "Fair Use" you will need to receive a license to show the movie.

Pictorial or Graphic Works

Copyright protects original "pictorial, graphic, and sculptural works," which include two-dimensional and three dimensional works of fine, graphic, and applied art. The terms "pictorial works" or "graphics" refer to two-dimensional images, such as blueprints, flow charts, drawings, paintings, photographs, and renderings. Generally, all of these items are protected by copyright. Please refer to the Guidelines for Use of Copyrighted Materials – Pictorial or Graphic Works under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#) for additional information regarding copyrighted pictorial or graphic works.



FAQs About Pictorial or Graphic Works

1. I wish just to show the pictures to my students during my lectures, without giving them copies. May I do so?

Yes. If you or KS owns the textbook, and if the textbook is authorized by the holders of copyright in the various pictures, the first-sale doctrine gives you the right to display the pictures to your students or even to the public. You may use an opaque or similar projector to do so, but you may not transmit the images outside the place where the textbook is located, for example, by closed circuit television. Besides the "first-sale" doctrine, two other special statutory exceptions (17 U.S.C. § 110 (1) & (2)) apply to this situation.

The first permits display "in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction." The second special exception involves the TEACH Act, discussed in Section C "Distance Learning Centers and the TEACH Act," in Guidelines for Use of Copyrighted Materials in Electronic Media Including the Internet under [KS Policy 760\[C\] - Use and Protection of Copyrighted Materials](#).

- 2. I offer a course on cinematic arts. I have a delightful book on the history of American film filled with photographs of movie stars and scenes from movies. I would like to show a number of these pictures to students in my class at the main Kapalama Heights campus, which is transmitted by television to classes on the Neighbor Islands. May I do so?**

If you comply with the terms of the TEACH Act, discussed in Section C (see above), you should be able to do so. Otherwise, however, current law requires you to get permission from the copyright holders to do this, even if you make no copies of the photographs and use only an opaque projector. The reason is that the "first-sale" doctrine does not allow for the image of a work to be transmitted beyond the confines of a single campus. The "first-sale" doctrine allows only "the projection of no more than one image at a time, to viewers present at the place where the copy is located."

There is a special exception (17 U.S.C. § 110 (1)) that allows such display for "face-to-face teaching . . . in a classroom or similar place devoted to instruction[.]"

The second special exception (17 U.S.C. 110 (2)) is the TEACH Act, which, in certain circumstances, permits transmission of displays more generally for mediated instructional activities in an accredited, nonprofit educational institution. See Section C "Distance Learning Centers and the TEACH Act," in Guidelines for Use of Copyrighted Materials in Electronic Media Including the Internet under [KS Policy 760 \[C\] - Use and Protection of Copyrighted Materials](#).

[Back to Topics](#)

Copyright © 1996–2008 Kamehameha Schools. All rights reserved. [Statements of Privacy, Copyright, and Disclaimer](#).
Managed by: [Legal Group](#) | Designed by: [CRC Web Management Department](#) | Updated: 11/30/2009