

# Siena College

## COLLEGE AND ADMINISTRATIVE POLICY

<b>Policy Title:</b>	<b>Policy Title:</b> <i>Copyright Usage and Compliance Policy</i>
<b>Type or category of Policy:</b>	<b>College Policy:</b> <i>This Policy is an official directive of broad and direct application across schools and other administrative units of the College.</i>
<b>Approval Authority:</b>	<b>Approval Authority:</b> <i>The President or designated representative, is responsible for final approval of a new or revised policy.</i>
<b>Responsible Executive:</b>	<b>Responsible Executive:</b> <i>The President charges the Vice President for Academic Affairs with authority to oversee development of the Copyright Usage and Compliance Policy and any revision of existing Policy as required in his or her area of jurisdiction and to ensure that appropriate stakeholders (e.g., senior executives, college counsel, vice presidents, deans, administrators, etc.) are appropriately consulted during these processes.</i>
<b>Responsible Office:</b>	<b>Responsible Office:</b> <i>The President will appoint an Intellectual Property Committee that includes a faculty member from each school, representatives from the library, computing and technology services, and the Vice Presidents for Academic Affairs and Finance and Administration or their designees. Under the direction of the Vice President for Academic Affairs, the IP/Copyright Committee develops or updates the policy and will be accountable for the accuracy of its subject matter, its issuance, and timely review. This committee is also responsible for ensuring that procedures necessary to carry out the policy are current and available.</i>
<b>Owner Contact:</b>	<b>Owner Contact:</b> <i>The Chair of the IP/Copyright Committee shall be the contact. The Standish Library (<a href="mailto:copyright-help@siena.edu">copyright-help@siena.edu</a>) will collaborate with the Office of Counsel (Copyright Officer) in responding to comments and specific questions about the Policy. (<a href="mailto:Copyrightofficer@siena.edu">Copyrightofficer@siena.edu</a>)</i>
<b>Reviewed By:</b>	<b>President's Cabinet</b>

<b>Reviewed Date:</b>	<b>15 November 2017</b>
<b>Last Revised and Effective Date of Revision:</b>	<b>Approved by vote of the Faculty October 9, 2018</b>

### ***Brief Overview of the Policy***

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S., code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. Certain specific academic uses are exceptions.

### ***Reason for Policy***

The purpose of the Siena College **Copyright Usage and Compliance Policy** is to provide a summary of U.S. Copyright law as it relates to the use of copyright-protected works or materials at Siena College. It provides guidelines, exceptions and procedures for obtaining copyright permission to use these works without infringement.

### **Scope of the Policy: Entities or Individuals affected by this policy**

This policy applies to all members of the Siena College community.

### **The Official Policy**

#### **1. Introduction**

Copyright grants to the author or originator the sole and exclusive privilege of literary or artistic productions and **publishing** and **selling** them, and the **rights to reproduce, distribute, publicly perform** and **publicly display** their works. These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works.

#### **2. Rules and Obligations, exceptions, special circumstances**

**Copyright protection exists for original works fixed in any tangible medium of expression, including:**

- Literary works
- Musical works, including accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic work
- Pictorial graphic and sculpture work

- Motion picture and other audiovisual works including videos and video recordings
- Sound recordings

Specifically, any books, magazines, journals, newsletters, maps, charts, photographs, graphic materials and any other printed materials; unpublished materials – such as analysts’ and consultants’ reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion picture, video files, sculptures and other artistic works are almost certainly copyrighted.

For works published after 1977, the copyright lasts for the life of the author plus 70 years. However, if the work is a work for hire (that is, the work is done in the course of employment or has been specifically commissioned) or is published anonymously or under a pseudonym, the copyright lasts between 95 and 120 years, depending on the date the work is published.

All works published in the United States before 1923 are in the public domain. Works published after 1922, but before 1978 are protected for 95 years from the date of publication. If the work was created, but not published, before 1978, the copyright lasts for the life of the author plus 70 years. However, even if the author died over 70 years ago, the copyright for an unpublished work lasts until December 31, 2002. And if such a work is published before December 31, 2002, the copyright will last until December 31, 2047.

Copyright also protects the right to “**make a derivative work**” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual arts.

### Exceptions

Copyright law does not protect ideas, data or facts. Other materials may or may not be protected by copyright and may have special requirements for copyright compliance. The appropriate resources should be consulted.

- A. Materials in the Public Domain
- B. Materials on the Web
- C. Standish Library Licensed materials
- D. Open-Source and Open-Access Materials; Creative Commons
- E. Fair Use Guidelines and Assessment
- F. Fair Use and Online Course Materials
- G. Classroom “Safe Harbor” Guidelines
- H. Performance or Displays in Classroom
- I. Other Options

### Resources

Web address for this policy (tbd)

#### Related Resources

**Contacts** – Subject: Copyright Help: [copyright-help@siena.edu](mailto:copyright-help@siena.edu)

**University Policies and Documents Applicable to All units of the College**

**Library:** <http://libanswers.siena.edu/faq/41183>

## External Documentation

U.S. Copyright Office: <https://www.copyright.gov>

Fair Use: <https://www.copyright.gov/fair-use/>

Copyright Law: <https://www.copyright.gov/title17>

American Library Association Copyright Tools:

<http://www.ala.org/advocacy/copyright-tools>

Copyright Clearance Center: <http://www.copyright.com>

Digital Millennium Copyright Act: <https://www.copyright.gov/legislation/dmca.pdf>

Creative Commons: <http://creativecommons.org>

## Definitions

**Public Domain** – Creative works not protected by copyright, trademark or patent laws. Works are considered in the public domain if: their copyright has expired; the copyright owner failed to renew it; the copyright owner puts the work in the public domain voluntarily (“dedication”); the work is not covered by copyright law.

**Standish Library licensed materials** – Resources such as e-journals and e-books (i.e. chapters) licensed by the library are generally allowed to be linked to directly from the source. But downloading and posting a PDF file on a course website from such a resource is generally not permitted.

**Fair Use** – Guidelines that allow for using copyrighted materials in the classroom for illustration or other educational purposes in limited amounts.

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. Section 107 calls for consideration of the following four factors in evaluating a question of fair use:

- *Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:* Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and character of the use against the other factors below. Additionally, “transformative” uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.
- *Nature of the copyrighted work:* This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Thus, using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
- *Amount and substantiality of the portion used in relation to the copyrighted work as a whole:* Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.
- *Effect of the use upon the potential market for or value of the copyrighted work:* Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner’s original work. In assessing this factor, courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread.

In addition to the above, other factors may also be considered by a court in weighing a fair use question, depending upon the circumstances. Courts evaluate fair use claims on a case-by-case basis, and the outcome of any given case depends on a fact-specific inquiry. This means that there is no formula to ensure that a predetermined percentage or amount of a work—or specific number of words, lines, pages, copies—may be used without permission. (Excerpted from <http://www.copyright.gov/fair-use/>).

**Online Course Materials** – Copyrighted resources linked to online courses are subject to fair use guidelines.

**Creative Commons** – Licenses that offer some alternative(s) to copyright (retaining all rights) and relinquishing all rights (public domain). Six different copyright licenses are possible.

**Safe harbors** – Provisions of the Digital Millennium Copyright Act of 1998 providing protection to internet service providers from copyright violations of their customers.

**Performance or displays** – Media, including movies and “snippets” in the classroom, in the course of face-to-face teaching is permitted as long as the movie was legally purchased. A teacher must be present and the location must be a classroom or a “similar place” devoted to instruction.

**Adopted:** Approved by President’s Cabinet 15 November 2017, subject to approval by faculty

**Reviewed:** *Date the policy was last reviewed.*

**Revised:** *Date(s) of revisions made to the policy.*