

COPYING GUIDELINES FOR CLASSROOM AND RESEARCH USE

I. INTRODUCTION

A. Purpose

Current copyright law grants a copyright owner certain rights regarding that owner's work. The copying, by photocopying or other means, and use of copyrighted materials can only be done subject to those rights. The University has adopted these copying guidelines for faculty and staff in an effort to achieve greater certainty of procedure, reduction of the risk of infringement of copyright, or allegations thereof, and the maintenance of a desirable flexibility to accommodate specific copying needs.

The importance of these guidelines is underscored by three common misconceptions. One misconception is that the duplication of copyrighted materials without permission for non-profit educational purposes is always permissible as a "Fair Use". This is not true. There are some very well defined limits to such uses. The second misconception is that a copyright owner is not likely to undertake efforts to protect a copyright. This is also untrue, and the penalties for copyright infringement can be very severe. The third misconception is that the absence of a copyright notice (©) signifies the absence of a claim of copyright. This is also not necessarily true and it should be assumed that a work may be protected, despite the absence of notice.

Copyright law applies to all forms of copying, whether it is done, for example: (i) at a commercial copy center, (ii) at the University's copy facilities, (iii) at a self-service copy machine, or (iv) by computer (i.e. by posting copyrighted material on the University's computer network or the Internet, or by emailing materials via a class distribution list). If you use the services of a commercial establishment, you may be asked to provide documentation of permission from the publisher.

The University encourages faculty members to exercise good judgment in the use of copyrighted materials, and to carefully and efficiently balance the following guidelines with the best interests of the students when making use of copyrighted materials.

B. Identifying Copyrighted Material

1. Published Works:

a. All copyrighted works published before March 1989 were required to bear notice of copyright. This notice could be found on the title page or the reverse side of the title page for a book; and on the title page, the first page of text, or the masthead for a periodical publication. Such notice states the person to be contacted if it is determined that permission is required to copy the work. You will not be liable for infringement concerning a work published before this

date if, after normal inspection, you photocopy a work on which you cannot find a copyright symbol and you have no actual notice of copyright.

b. For works published after March 1989, no notice of copyright is required. Thus, in the absence of notice of copyright for such a work, it must be assumed that permission is required for copying or derivative use.

c. All copyrights prior to 1906 have expired. These works can be freely photocopied.

2. Unpublished Works, such as dissertations and thesis, may be protected by copyright.

a. Works created before January 1, 1978 are protected for the life of the author plus 70 years, but in no case will the protection expire before December 31, 2002. If such a work is published on or before that date, the copyright will not expire before December 31, 2047.

b. Works created after January 1, 1978, and not published enjoy copyright protection for the life of the author plus 70 years.

3. Public Domain Materials may be reproduced without permission.

a. U.S. Government Publications: All U.S. government publications may be copied without restrictions, except to the extent they contain copyrighted materials from other sources. U.S. government publications are documents prepared by an official or employee of the government in an official capacity. Note that federally commissioned works can be copyrighted, and that state government works may be protected by copyright.

It must also be noted that a commercial compiler or publisher of government materials (such as the West's reference series) may properly claim copyright protection for independently authored notes and other materials accompanying such official declarations, as well as the sequence and organization of the official declarations themselves.

b. Judicial Opinions: The literal word order of judicial opinions is in the public domain, and may be used without restriction. This includes the text of judicial opinions contained in material prepared by commercial reporters or compilers, such as West's. However, within such commercial publications, there is copyright protection covering the arrangements of cases, headnotes, annotations, and syllabi. As such, permission may be required in order to make

multiple copies of judicial opinions in full that include syllabi, headnotes, key numbers, or other copyright protected materials.

c. Official Transcripts and Court Records in Litigated Cases:

These are generally considered to be public documents when filed and classroom use of the materials is permissible without obtaining permission. Be aware, however, that some law firms may assert copyright ownership for court documents that they have prepared and filed with the court on behalf of their clients.

d. State Statutes, Regulations, Ordinances, Municipal Codes:

These materials are in the public domain, and reproduction of portions of their official text may be freely made without permission. However, if the text of a statute or of regulations is taken from a commercial source, (e.g. BNA, Patent, Trademark & Copyright Journal) then care must be exercised to copy only the text of the statute or regulations. Editorial comments and explanatory material are within the scope of the publisher's copyright protection and permission to make multiple copies may be required.

4. Fully Copyrighted Materials: These are: Textbooks, Casebooks, Treatises, "Nutshells", and Commercial Outlines; Newsletters; and Periodicals.
5. Note: Some periodicals published by tax-exempt educational institutions, such as some law journals, expressly grant the right to copy for classroom use, subject to three conditions:
 - a. Copies must be distributed to students at or below cost;
 - b. The author and the journal must be identified on the copies; and
 - c. The named copyright owner must be notified of the use.

II. THE FAIR USE DOCTRINE: WHEN PERMISSION IS NOT NEEDED TO COPY

An important limitation upon the rights of the copyright owner is the "Fair Use" doctrine. If the Fair Use doctrine applies, the copying of copyrighted material and the preparation of a derivative work without the copyright owner's permission is allowable. The doctrine permits the use of copyrighted material in a "reasonable manner" without consent. Teaching, scholarship, and research are deemed reasonable. There are four factors that are to be considered in determining Fair Use, and in each case faculty members must determine for themselves the factors which weigh in favor of and against Fair Use. These factors are: 1) the purpose and character of the use, including whether such use is commercial in nature; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work; and 4) the effect of the use upon the potential market for or value of the copyrighted work.

A. Introduction

These guidelines for the copying and derivative use of copyrighted works are meant to be the minimum educational uses allowable without permission under the Copyright Act. These guidelines are not limits to the types of copying permitted under the standards of Fair Use (as outlined above), and there are instances in which copying that does not fall within the guidelines stated below will nonetheless be permitted under the criteria of Fair Use.¹ Any copying that exceeds these minimum levels must be judged by the faculty members under the four factors of Fair Use as discussed above. Please note that there are specific requirements² that must be met when copying material for distance programs and electronic (*i.e.* internet) courses.

B. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class: 1) a chapter from a book; 2) an article from a periodical or short story; 3) a short story, short essay or short poem, whether or not from a collective work; and 4) a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

C. Multiple Copies for Classroom Use

Permission is NOT REQUIRED for a teacher giving a course to make multiple copies (never to exceed more than one copy per pupil in a course) for classroom use or for discussion – with the FOLLOWING THREE LIMITATIONS:

1. The following requirements for BREVITY are met:
 - a. Poetry may be copied without permission if it is:
 - i. a complete poem of less than 250 words AND if printed on not more than two pages; or
 - ii. from a longer poem, an excerpt of not more than 250 words.
 - b. Prose may be copied without permission if it is:
 - i. A complete article, story, or essay of less than 2,500 words; or
 - ii. an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (The numerical limits stated in “a” and “b” above may be expanded to permit the completion of

¹ Some examples of Fair Use beyond these guidelines are:

1. The inability to obtain another copy of the work because it is not available from another library or source or cannot be obtained within your time constraints.
2. The intention to copy the material only once and not to distribute the material to others.
3. The ability to keep the amount of material copied within a reasonable proportion to the entire work (the larger the work, the greater amount of material which may be copied).

² These requirements are discussed below in Section II(D).

an unfinished line of a poem or of an unfinished prose paragraph.)

- c. Illustrations not requiring permission to copy include: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
 - d. “Special” works: Certain works in poetry, prose or in “poetic prose” often combine language with illustrations and are intended for children, though sometimes also for larger audiences. These works usually fall short of 2,500 words in their entirety. In spite of section “b” above, these “special” works may NOT be reproduced in their entirety. However, an excerpt of not more than two of the published pages of such a work, AND containing not more than 10% of the words found in that work may be reproduced without permission.
2. The conditions for SPONTANEITY are met:
 - a. The copying is at the instance and inspiration of the individual teacher; and
 - b. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
 3. The conditions for CUMULATIVE EFFECT are met:
 - a. The copying of the material is for only one course in the school in which the copies are made;
 - b. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term; and
 - c. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations in “b” and “c” above do not apply to current news periodicals and newspapers and current news sections of other periodicals.)

D. Copying for Interactive and Digital Classes

1. When teaching through distance programs and electronic (internet) courses, the following requirements must be met for the use of “nondramatic literary or musical work or reasonable and limited portions of any other work or display of a work” which would normally be used in a live classroom:

- a. The work was not originally produced to be used for digital instruction;

- b. The copy being shown was not made unlawfully;
 - c. Transmission or display is an integral part of the classroom experience;
 - d. The transmission or display is “directly related and of material assistance to the teaching content;”
 - e. To the extent it is technologically feasible the transmission is made only to students officially enrolled in the class; and
 - f. The material is only available to students for the time of the class session (however long a student is logged onto the server) and can not be redistributed to others.
2. To allow for these uses, digitized copies of portions of analog works are permitted if:
- a. The copies are retained by the University and used only as permitted above; and
 - b. The digitizing of an analog work occurs because there is no digital version of that work or existing versions have protective measures that prohibit the use as described above.

E. Absolute Restrictions

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
2. Works intended to be “consumable” in the course of studying or teaching shall not be copied. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
3. Copying shall not: a) substitute for the purpose of books, publishers’ reprints or periodicals; b) be directed by higher authority; or c) be repeated concerning the same item by the same teacher from term to term.
4. No charge shall be made to the student beyond the actual cost of the copying.

III. OBTAINING PERMISSION TO USE OR COPY

If it is determined that a proposed use of copyrighted material does not fall under the Fair Use guidelines above or under the broader factors of Fair Use, and that permission is needed to copy a work, there are several ways to obtain it.

- A. From the Copyright Holder:** This may involve no more than locating another professor from available directories, such as the AALS directory for law professors, and contacting him or her.

B. From the Publisher: If the address of a publisher is not apparent from the work in question, it may be obtained from The Literary Marketplace (for books) or Ulrich's International Periodicals (for journals).

C. Central Licensing Organizations, which administer licenses and collect royalties, may be contacted. One is the Copyright Clearance Center, which handles over eight thousand publishers. For an agreed upon fee, protected material may be copied as needed. There are other such arrangements for permission among certain publishers and many college bookstores. The Copyright Clearance Center is located at 222 Rosewood Drive, Danvers, MA 01923. Telephone: (508) 750-8400; FAX: (508) 750-4410.

D. Generally: Requests for permission should be sent with a stamped, self-addressed envelope, and should include: the title, author and/or editor, and the edition of the work to be duplicated; the exact material to be used, giving amount, page numbers, chapters, and if possible, a photocopy of the material; the number of copies to be made; the use to be made of the duplicated materials; the form of distribution (classroom, newsletter, etc.); whether or not the material is to be sold; and the type of reprint to be used (ditto, photocopy, offset, typeset, etc.).

IV. INFRINGEMENT

Normally, an infringer is liable to the copyright owner for the actual losses sustained because of the copying and any additional profits of the infringer. Where the monetary losses are nominal, the copyright owner usually will claim statutory damages instead of the actual losses. The statutory damages may reach as high as \$20,000 (or up to \$100,000 if the infringement is willful). In addition to suing for money damages, a copyright owner can usually prevent future infringement through a court injunction.

The Copyright Act specifically exempts from statutory damages any employee of a non-profit educational institution, library or archives who "believe and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107." While the fair use provisions are admittedly ambiguous, any employee who attempts to stay within the guidelines contained in this policy should have an adequate good faith defense in the case of an innocently committed infringement.

V. QUESTIONS regarding this policy should be directed to the Provost's Office.

These guidelines contain revisions approved as of January, 2003.