

VWCC COPYRIGHT POLICY AND GUIDELINES FOR USING COPYRIGHTED MATERIAL

Purpose

Virginia Western Community College expects all members of the faculty and staff to comply with United States Copyright Law. VWCC believes faculty and staff can best serve the College and protect their own interests by acquiring a basic knowledge of current United States Copyright Law and Virginia Community College System (VCCS) and VWCC policy. These guidelines cover most academic uses of copyrighted works.

VWCC Faculty and Staff Responsibility for Legal Use of Copyrighted Materials and Liability for Copyright Infringement

- A. **Responsibility for Legal Use of Copyrighted Materials.** All VWCC faculty and staff are responsible for not exceeding legal use of copyrighted materials. In this respect, faculty and staff members shall follow fair use doctrine, as described in this document, when using copyrighted materials, shall read and abide by all license agreements between Virginia Western Community College and publishers or producers for specific items, and shall request permission to use copyrighted materials when necessary.

- B. **Faculty and Staff Liability for Copyright Infringement.** Federal copyright law provides stiff penalties for copyright infringement, including fines up to \$150,000. Some publishers and software producers aggressively pursue copyright violators by offering rewards to informers who report unauthorized duplication. In the event the College is sued for copyright violations, the person actually infringing copyright will be held liable.

- C. **Licenses and Contracts.** As College contract officer, the Vice President of Financial and Administrative Services is responsible for signing all licenses and contracts for the use of copyrighted material.

The Vice President of Financial and Administrative Services maintains central files containing copyright agreements between faculty and staff and the College.

Technical Support Services (TSS) maintains software registration and license files for college-wide applications, such as the Microsoft Campus License Agreement, Adobe Connect, Symantec Anti-Virus software, and many others. TSS typically approves technology-related hardware and software purchases, but the individual employee or division/department that actually procures the software maintains the software registration and license information. If there seems to be enough demand for a particular product, TSS will agree to obtain the software for college-wide use and manage the distribution of licenses.

- D. **Web Sites.** If copyright violations on the College web site are reported to Technical Support Services (TSS), the web page(s) containing the copyrighted material will be shut down immediately. TSS will inform the employee responsible for the web page(s), his/her supervisor, and the appropriate Vice President of the report and the action taken.

- E. **Blackboard.** Faculty members posting copyrighted material to course management websites are responsible for following fair use guidelines, acquiring necessary permissions, and maintaining a record of those permissions.
- F. **Copyright Warning Notices.** Administrators responsible for microcomputer laboratories or for any kind of copying machines available to the public must post copyright warning notices on all reproducing equipment, including but not limited to, photocopiers, printers, microform printers, computers, VCRs, tape recorders, and scanners. The notice should state:

Notice Warning Concerning Copyright Restrictions

The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.”

The Library shall send a copy of VWCC’s warning of copyright infringement liability with each copy of software. Libraries must use specific wording described below in the library section.

- G. **Music Licenses.** The Vice President of Administrative and Financial Services monitors VWCC’s agreements with the music licensors ASCAP, BMI, and SESAC.
- H. **Printing Services.** The Printing Services request form requires the requester to declare whether or not the material to be copied is copyrighted. If the material is copyrighted, the requester must provide a copy of the written permission to use the copyrighted material given by the copyright holder.

Copyright Law

United States copyright law protects certain creative works from the moment they are produced in tangible form; creators are not required to formally register their works with the U.S. Copyright Office to be protected. Printed materials, such as books, journals, and printed music, are protected, as well as sound recordings, films, videocassettes, art works, computer software, choreography, architecture, and text and photographs displayed on web sites.

The Copyright Act of 1976 grants copyright owners exclusive rights to reproduce, distribute, adapt, perform, and display their works. Reproduction, distribution, and display are easy to understand. The right to adapt a work means the right to make derivative works, such as translations, instructor's manuals, or new arrangements of musical compositions. The right to perform a work includes reading aloud, reciting, presenting a play, and dancing a work.

Legislators have defined some exceptions to copyright owners’ exclusive rights under the "fair use" doctrine described below. Such exceptions aside, anyone publishing, reproducing, performing, adapting, or displaying all or part of a copyrighted work must obtain permission from the copyright owner; otherwise, such use infringes the copyright.

The Digital Millennium Copyright Act of 1998 (DMCA) attempts to define copyright in the online world, but severely restricts educators' digital fair use privileges. When the law was passed, Congress asked the Copyright Office to conduct a study and write a report on distance education in the digital age. The report, which recommended allowing educators to extend fair use principles to digital media, was published in spring of 1999. Congress decided to watch developments for a few years before considering amendments to the law.

Virginia signed UCITA, the Uniform Computer Information Transactions Act, into law in the summer of 2001. UCITA, sometimes called the shrink-wrap law, is contract law designed to standardize the law regarding the licensing of software and all other forms of digital information. The law is not friendly to educators or other consumers because it makes many contracts non-negotiable.

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 expanded educators' rights to transmit copyrighted works in digital distance education so long as strict conditions are met, but fair use rules under TEACH are more stringent than in the familiar face-to-face teaching guidelines.

The Fair Use Doctrine

The 1976 Copyright Act included a four-factor test to determine fair use of a copyrighted work. These four factors, all of which must be considered, are:

- Purpose and character of use,
- Nature of the copyrighted work,
- Amount and substantiality of copying, and
- Effect of the use of the work on market value of the work

Non-profit educational uses are preferred in fair use determinations. Use of copyrighted published material based on fact rather than fiction is more likely to be allowable under the fair use doctrine. A small amount of the whole is preferred. However, if the section to be copied is central or critical to the work as a whole, it is considered substantial no matter how few words or pages are included. In this case, copying of such a section would violate fair use. A record of the application of the four-factor test should be maintained for all instances in which it is used. An example of a Fair Use checklist is provided in Attachment 6.

Difficulty in applying the four-factor test for fair use mentioned above gave rise to a number of private groups developing additional guidelines in hopes of clarifying the legal requirements. **Please note that the guidelines included in Attachment 7 are in fact guidelines, not codified law.** A planned use of copyrighted materials may not fall within the guidelines, but still be permitted under the Fair Use Doctrine.

Copyright Act Provisions for Libraries

Section 108 of the Copyright Act adds provisions for libraries:

- **Unpublished Works.** Libraries may copy unpublished works of any sort solely for the purpose of preservation and security in facsimile form but not in machine-readable form.
- **Out-of-Print Works.** Libraries may copy in facsimile form any sort of out-of-print published work to replace a damaged, lost, or stolen copy after trying reasonably but

unsuccessfully to replace the work at a fair price from the trade.

- **Copyright Notices**

Libraries shall post a copyright warning notice on every copying machine. The following wording is mandatory, even for machines the patrons will use personally. The warning notice is included as a separate page (see Attachment 5) so that photocopies can be made and posted wherever necessary.

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Use of Copyrighted Music

- **Reproduction of Music.** The four-factor test should be applied to determine fair use of copyrighted music. Guidelines for educational uses of music are included in Attachment 7.
- **Derivative Works.** While the copyright owner retains the exclusive right to make arrangements of a piece of music, educators are allowed to edit or simplify printed copies of purchased music. Educators are not allowed to change the fundamental character of the music or to change or add lyrics.
- **Music Licenses.** The College contracts with and pays annual fees to three music licensing organizations, BMI (Broadcast Music Inc.), ASCAP (American Society of Composers, Authors and Publishers) and SESAC (Society of European Stage Authors and Composers). The annual fees cover College music performances, the use of music in theatrical productions, and the use of cable and Internet technology for the broadcasting of music in an electronic format where the College specifically has an educational or community outreach intent. For additional information on music licenses and what may or may not be covered, contact the Vice President of Financial and Administrative Services.

Performances

According to U.S. Law, "To 'perform' a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it

audible." School performances are generally considered public performances.

- A. **Dramatic Works.** For plays and musicals, Section 110 of the law provides four criteria to define the only exception to copyright infringement for public performance of dramatic works:

(1) When a performance takes place in the course of a face-to-face teaching activity - i.e., instructional performances and displays that are not transmitted; and (2) it is in a nonprofit educational institution; and (3) it is conducted in a classroom or similar place (such as a library) devoted to instruction; and (4) in the case of an audiovisual work, when the copy (e.g., film or videotape) is lawfully made.

No public performance of copyrighted dramatic works (including the showing of films, theatrical productions, etc.) is protected by Fair Use if the performance does not meet the four criteria for exception as defined in Section 110 of the law.

- B. **Non-dramatic Works.** The exemption quoted above for dramatic works also applies to performances of non-dramatic literary or musical works. In addition, performances of non-dramatic works may be (a) transmitted to other classrooms and to handicapped persons who are unable to be present in classrooms if the performance and transmission are part of the instructional program, or (b) open to the public if the performance is not broadcast, the performers are not compensated, there is no admission charge, any proceeds go to educational purposes, and the copyright owner does not object in writing at least seven days before the performance.

- C. **Audiovisual Works.** The rules are the same as those governing any performance.

D. **Videotapes and Films**

- **Classroom Use.** Classes with teachers in attendance may view videotapes for instructional purposes, but they must be shown in a face-to-face setting, not transmitted, and the videos must clearly relate to the class.
- **Entertainment.** Videotapes shown for entertainment purposes are considered public performances. Before showing a film or tape for entertainment, make sure the College purchased public performance rights.
- **Library Use.** Individuals and very small groups may be permitted to view a videotape in a study carrel or viewing room.

E. **Off-Air Recording (Television and Radio)**

At this time, Technical Support Services does not provide off-air recording or copying services. The four-factor test should be applied to determine fair use of off-air recordings. Faculty and students recording off-air programs for showing or playing in class should read and familiarize themselves with the guidelines included in Attachment 7.

Images

- A. **Photocopying.** The four-factor test should be applied to determine fair use of images. The guidelines for copying for classroom use (Attachment 7) include references to images.
- B. **Slides.** Purchase slides when possible and do not make duplicates. When making slides for use in the classroom because they are not available for sale, make only one copy of a picture, and do not make copies of every picture in a book. Do not digitize slides.
- C. **Clip Art.** Read the license before using clip art and abide by any restrictions, such as "do not digitize."
- D. **Copyright Notice.** Always include copyright information with each image used.

Multimedia

Students and faculty can incorporate portions of lawfully acquired copyrighted works into their projects so long as a student's project is for a specific course and a teacher's project will be a teaching tool in support of curriculum-based instructional activities. Fair Use Guidelines for Educational Multimedia are included in Attachment 7.

The TEACH Act

The TEACH Act expanded educators' rights to transmit copyrighted works in digital distance education so long as strict conditions are met.

- VWCC is a non-profit educational institution.
- VWCC is responsible for meeting some of the TEACH conditions such as limiting reception to enrolled students, taking technological measures to control access and to prevent further dissemination, and limiting the time any distance education class will be retained on the system or network.
- VWCC and faculty are responsible for making copyright information available to students who will be viewing the copyrighted materials.

A. **Permissible Use of Legally Acquired Materials:**

- Transmitting complete performances of non-dramatic literary works.
- Transmitting complete performances of non-dramatic musical works.
- Transmitting limited portions of other works. See guidelines for off-air recordings and multimedia for allowable portions.

B. **Not Permissible:**

- Transmitting anything that is produced and sold for performance or display as part of a digitally transmitted mediated instructional activity unless VWCC purchases a license that allows us to do so.
- Transmitting textbooks or course packs.
- Converting anything to digital format that already is available – usually for sale – in digital format.

- Converting to digital format, a greater portion of a copyrighted work than educator will use in a course.

C. Conditions:

- Amount displayed must be the same as for a live class.
- Content must be directly related to a class session and part of systematic mediated instructional activities.
- Content cannot be supplemental material.

There may be instances in which the planned use of copyrighted material does not fall within the scope of the TEACH Act, but may nonetheless be permitted under the criteria of fair use. When using copyrighted materials based on the Doctrine of Fair Use, instructors should remember to consider and document the evaluation of all four fair use factors including effect on market value. Use should be spontaneous and limited to one time.

Microcomputer Software

- A. The fair use doctrine does not apply to microcomputer software. Most software is licensed rather than sold outright and license terms vary widely from one package to another. The Uniform Computer Information Transactions (UCITA) took effect July 1, 2001 in Virginia. Shrink-wrap and click-on licenses are enforceable by law, even if the person clicking does not have institutional authority to agree to a license.
- B. VWCC faculty and staff shall read, file, and abide by all license agreements for software installed in personal computers assigned to them. VWCC equipment shall not be used to make illegal copies of software. VWCC prohibits the use of illegally copied software in its offices or laboratories.
- C. VWCC faculty and staff shall read and abide by the College's Computer Ethics Policy statement.
- D. Supervisors of student labs shall post copyright warnings and monitor student software use. Students who make illegal copies of software while using College facilities will be banned from all VWCC microcomputer laboratories. Other disciplinary action may also be taken.
- E. Copyright Law specifies users may make a backup or archival copy of the software in case of a later problem with the software. Backup software copies may be used only if the original copy fails.
- F. If a user buys a new version of software outright (rather than an upgrade) and does not plan to use the older version of the software, he/she should destroy the old version of the software, including manuals, when the new software is installed.

Internet

- A. Everything posted on the internet is open to wide public scrutiny. If a piece of text or graphics or recorded music to be included on a web site is copyrighted, be

certain to get permission before posting it, and be sure to include copyright information with the piece.

- B. Unless there is a clear statement on a web site that text and graphics are public domain and free for all to use, assume everything is copyrighted and that users do not have the right to copy, reproduce, or modify it without permission.
- C. Linking to other sites from a web page is permitted, as long as the originating web page identifies the link-to sites clearly, and the user easily can tell the web page apart from the link-to site.

Blackboard

- A. Faculty can post material on Blackboard if: (1) the instructor is the copyright owner, (2) the instructor has permission from the copyright owner, (3) the material is in the public domain, or (4) use is "fair use" under the law. When possible, instructors should link to copyrighted materials rather than posting them.
- B. While the doctrine of fair use does not apply to unprotected internet sites, it can be applied to password protected course management sites such as Blackboard. When posting copyrighted material without permission, instructors should remember to consider and document the evaluation of all four fair use factors including effect on market value. Use should be spontaneous and limited to one time.

Procedures for Obtaining Copyright Clearance

Faculty and staff needing copyright permission must write for permission to the copyright holder. Request all permissions for a specific project at the same time. Do not ask for blanket permission, but provide the following detailed information:

- Title, author, and/or editor, and edition of materials to be used/duplicated
- Exact material to be used, including amount, page numbers, chapters, and, if possible, a photocopy of the material
- Number of copies to be made
- Intended use to be made of duplicated materials, along with size and type of audience
- Form of distribution, such as classroom handout, newsletter, web page
- Whether copied material will be for sale or free
- Duplication method (photocopy, offset, typeset, video, slides, audiocassettes, computer-digitizing, etc.)

Include a self-addressed stamped envelope with the request and allow sufficient lead time prior to actual need. After receiving permission to use the material, the requester should retain the permission document in his/her own file or in the division's file until the allowed time elapses.

A. Sample Permission Letters

Sample permission letters and forms are reproduced in Attachments 1-4 for this section. The information in these attachments may be duplicated and modified as necessary in seeking proper copyright permission.

- Permission to duplicate print materials (see Attachment 1).
- Permission to digitize images (see Attachment 2).
- Permission to arrange music (see Attachment 3).
- Inquiry form for out-of-print copyrighted music (see Attachment 4).

B. Printing Services/Duplicating Requirements

Copyrighted material will be produced only in conformity with congressional standards for educational fair use or with written documentation showing that permission has been granted by the copyright holder(s).

For a sample generic permission letter and more information and training on copyright, fair use, and the TEACH Act see Attachment 8.

Acknowledgement:

The basic content of this document was created by Northern Virginia Community College. VWCC was granted permission to modify the document to reflect VWCC policies, procedures, and practices.

July 2008
Revised May 2009

Sample Request for Permission to Duplicate Print Material
Use College letterhead stationery.

Date

Permission Department
Parrot Press
123 Zebra
Ann Arbor, MI 12345

Dear Sir or Madam:

As a faculty member of Virginia Western Community College, a nonprofit higher education institution of the Commonwealth of Virginia, I would like permission to duplicate the following for use in next semester's class:

Title:	HANDBOOK FOR WRITERS
Edition:	3 rd
Copyright:	Parrot Press, 2001
Author:	Glenn H. Leggett
Material to be duplicated:	Pages 26 - 30 (photocopies enclosed), all in Chapter 2
Number of copies:	26
Distribution:	English Composition I classroom; the material will be distributed free to students
Type of reprint:	Photocopy

The pages listed will be used as supplementary materials for the class.

A self-addressed envelope is enclosed for your convenience. Please reply by _____.

Please let me know what your fee will be for this permission.

Sincerely,

Alice Jones, Assistant Professor
Humanities Division

Sample Request for Permission to Digitize Images

Use College letterhead stationery.

Date

Permission Department
Biological Productions
Mt. Vernon, CA 98876

Dear Sir or Madam:

As a faculty member of Virginia Western Community College, a nonprofit higher education institution of the Commonwealth of Virginia, I would like permission to use five slides from one of your collections. I plan to digitize the slides and use them in combination with other images in a PowerPoint presentation to show the development of a tree to General Biology students.

Title: TREES AND THEIR IMPORTANCE
Collaborator: William M. Harlow. Slide Collection # 2392
Materials to be duplicated: Slides 45 through 49
Type of Reproduction: Digital copies will be made.
Number of Copies: Only one copy will be made of each frame.
Use to be Made of Copies: The five images will be shown in sequence within a PowerPoint presentation.
Distribution of Copies: The PowerPoint presentation will be shown to three classes of General Biology students. Average class size is 25.

Enclosed for your convenience is a self-addressed stamped envelope. Please let me know what conditions, if any, apply to this use.

Sincerely,

Joe Smith
Professor, Biology

Permission granted: _____
Signature Date

Conditions, if any:

Request for Permission to Arrange Music

(Photocopy form as needed.)

Prepared by: Music Publishers' Association of the US, and National Music Publishers' Association, Inc. Modified by Virginia Western Community College for its use.

REQUEST FOR PERMISSION TO ARRANGE

Part 1

Instructions

This form is to be prepared in duplicate. After completing Part 1 and signing both copies where indicated, forward both to the publisher, who will complete Part 2 of the form and return it to you. If the publisher indicates a payment for the right you request, and if the conditions are agreeable to you, remit the amount to the publisher together with the original copy, signed by the publisher, whereupon the agreement will be completed.

VWCC faculty and staff must contact the Vice President of Financial and Administrative Services prior to completing this form.

TO: _____ Date: _____
(Name of Publisher)

(Address of Publisher)

Dear Sir or Madam:

We hereby request your permission and nonexclusive license to arrange the following musical composition:

By: _____ (words)

By: _____ (music)

(hereinafter referred to as "The Arrangement")

1. The Arrangement will be for _____ in
(type of arrangement)

_____. We will produce _____ copies
(number of instrumental and/or vocal parts)

of The Arrangement for use and performance only by our _____
(faculty, students, etc.)

for which no admission fees shall be charged or for performance otherwise exempt under the provision of the US Copyright Law.

REQUEST FOR PERMISSION TO ARRANGE
Part 2

2.No right to record or to reproduce additional copies is granted to us. We understand that if we wish to record The Arrangement, a separate license will be required. We agree not to distribute (except for use of copies as provided in Paragraph 1), sell, loan, or lease copies of The Arrangement to anyone.

3.All copies of The Arrangement shall bear the following copyright notice:

© 200_ (name of publisher), All rights reserved.

and the words "Arranged by Permission" at the bottom of the first page of music of each part of The Arrangement. We will furnish you with a copy of The Arrangement upon completion.

4.The College will have The Arrangement made by a person connected with us as our employee for hire, without any payment obligation on the Publisher's part, and the signatures of both parties below shall assign to the Publisher all of the College's rights in The Arrangement and the copyright in The Arrangement, together with the sole right of registering the copyright as a work made for hire, in the name of the Publisher or Publisher's designee.

5.Additional provisions (if applicable):

6.In consideration of your permission to arrange, we will pay you \$ _____ upon the granting by you of the permission requested.

7.This license agreement sets forth our entire understanding and may not be modified or amended except by written agreement signed by both of us.

Vice President of Financial and Administrative Services
Virginia Western Community College
P.O. Box 14007
Roanoke, Virginia 24038

By: _____
Vice President of Financial and Administrative Services

Permission Granted:

By: _____
(Publisher)

Permission denied because:

- 1. Arrangement available for sale.
- 2. Arrangement in process of publication for sale.
- 3. May not be arranged because of contractual commitments.
- 4. Other: _____

Inquiry Form on Out-of-Print Music

(Photocopy form as needed.)

Prepared by: Music Publishers' Association of the US, and National Music Publishers' Association, Inc. Modified by Virginia Western Community College for its use.

INQUIRY FORM ON OUT-OF-PRINT COPYRIGHTED MUSIC

INSTRUCTIONS

This form is to be prepared in duplicate. After completing the boxed section and signing both copies where indicated, forward them to the publisher who will complete the form and return it to you. If the publisher indicates a payment for the right you request, and if the conditions are agreeable to you, remit the amount to the publisher together with the original copy, signed by the publisher, whereupon the agreement will be completed.

VWCC faculty and staff must contact the Vice President of Financial and Administrative Services prior to completing this form.

To: _____ (Name of Publisher)

Address: _____

From: _____
Vice President of Financial and Administrative Services
Virginia Western Community College
P.O. Box 14007
Roanoke, VA 24013

540- 857-7201 (phone) 540-857-6526 (fax)

The College wishes to procure _____ copies of your copyrighted publication:

_____ (Title)

_____ (Arrangement)

_____ (Composer)

If it is in print:

Please indicate the price per copy here \$ _____

If it is out of print:

A) Do you have plans to reprint it? _____ If so, when? _____
At what price per copy? _____

B) If there are no plans for reprinting, we request your permission to have a nonexclusive right to reproduce by photocopy _____ copies for use by our _____.
(students, faculty, etc.)

The copies will be identical to your publication, including the copyright notice. The following will be legibly included on the first page of each copy of our reproduction:

"This reproduction is made with the express consent of _____
(copyright owner's name)

in accordance with the provisions of the United States Copyright Law."

The College acknowledges that it is granted no right to sell, loan, or otherwise distribute reproduced copies of the publication other than for the use set down above. No other rights of any kind for any other use are included in this permission.

If permission to make copies can be granted:

Will you charge a fee? _____

If so, how much? _____

If you do not grant the above permission:

Will you supply me (us) with _____ photocopies? _____
(number)

If so, at what price per copy? _____

By: _____ Date: _____
(Vice President of Financial and Administrative Services)

Accepted and Agreed to By: _____

Title: _____ Date: _____

Warning Notice Concerning Copyright Restrictions
(Photocopy form as needed.)

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

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Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project.

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

PURPOSE*Favoring Fair Use*

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

NATURE*Favoring Fair Use*

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

AMOUNT*Favoring Fair Use*

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

EFFECT*Favoring Fair Use*

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long-term use

Guidelines for Use of Copyrighted Materials

Difficulty in applying the four-factor test for fair use gave rise to a number of private groups developing additional guidelines in hopes of clarifying the legal requirements. **Please note that the guidelines included in this attachment are in fact guidelines, not codified law.** A planned use of copyrighted materials may not fall within the guidelines, but still be permitted under the Fair Use Doctrine.

Classroom Copying (Books and Periodicals)

Representatives from educational institutions, authors, and publishers published an *AGREEMENT ON GUIDELINES FOR CLASSROOM COPYING IN NOT-FOR-PROFIT EDUCATIONAL INSTITUTIONS*. These guidelines were published in 1976 and have not been updated.

The purpose of the following guidelines is to state the minimum standards of educational fair use under Section 107 of H.R. 2223. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

I. 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:

A. A chapter from a book;

B. An article from a periodical or newspaper;

C. A short story, short essay or short poem, whether or not from a collective work;

D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and

B. Meets the cumulative effect test as defined below; and

C. Each copy includes a notice of copyright.

DEFINITIONS

Brevity

(i) Poetry: (a) a complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10

percent of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in (i) and (ii) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii)Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

(iv)"Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph (ii) above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof, may be reproduced.

Spontaneity

(i)The copying is at the instance and inspiration of the individual teacher, and

(ii)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.

Cumulative Effect

(i)The copying of the material is for only one course in the school in which the copies are made.

(ii)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.

(iii)There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in (ii) and (iii) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals].

Prohibitions as to 1 and 2 Above

Notwithstanding any of the above, the following shall be prohibited:

A. 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.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises,

standardized tests and test booklets and answer sheets and like consumable material.

- C. *Copying shall not:*
- (a) *substitute for the purchase of books, publishers' reprints or periodicals;*
 - (b) *be directed by higher authority;*
 - (c) *be repeated with respect to the same item by the same teacher from term to term.*
- D. *No charge shall be made to the student beyond the actual cost of the photocopying.*

Copying of Library Materials

A. Library Reserves

The American Library Association wrote and published a ***Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve***. According to the guidelines, libraries may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with the guidelines governing formal classroom distribution for face-to-face teaching because the library reserve shelf functions as an extension of classroom readings or reflects a student's right to photocopy for personal scholastic use.

B. Interlibrary Loan

CONTU, the Commission on New Technological Uses of Copyrighted Works, wrote guidelines for interlibrary loan of periodical articles. The guidelines placed no restrictions on the number of copies of articles requested for materials published more than five years before, but for materials published in the preceding five years:

- A library may request five same-book or same-periodical loans or copies of articles, after which the library must attempt to purchase the book or periodical.
- A library may fill no more than five requests for the same book or same periodical for a given institution. The library must include a notice of copyright on all copies sent.
- The library must maintain records on loans for three calendar years after the year the loans are requested or filled.

Educational Uses of Music

The following is extracted from *Guidelines for Educational Uses of Music*, as printed in the 1976 Report of the House Committee on the Judiciary (HR94-1476). While the language does not mention digital recordings since the technology did not yet exist, this remains the definitive guideline for recording music.

- ***Permissible Uses***

- *Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.*
- *For academic purposes. For academic purposes other than performance, single or multiple copies of excerpts of works may be made provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.*
- *For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is, (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.*
- *Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.*
- *A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.*
- *A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright which may exist in the sound recording.)*

- ***Prohibitions***

- *Copying to create or replace or substitute for anthologies, compilations or collective works.*
- *Copying of or from works intended to be consumable in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, etc.*
- *Copying for the purpose of performance, except as described above.*
- *Copying for the purpose of substituting for the purchase of music, except as described above*
- *Copying without inclusion of the copyright notice which appears on the printed copy.*

Use of Off-Air Recordings of Broadcast Programming (Television and Radio)

The following extract is from *GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES* (1979 Negotiating Committee appointed by US House of Representatives Subcommittee on Courts, Civil Liberties and Administration of Justice).

(1)The guidelines were developed to apply to off-air recording by non-profit educational institutions.

(2)A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive days after a date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

(3)Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days - not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions - within the forty-five (45) calendar day retention period.

(4)Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

(5)A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

(6)After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

(7)Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

(8)All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

(9)Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Use of Multimedia

The Fair Use Guidelines for Educational Multimedia distinguish between students and teachers. Both can incorporate portions of lawfully acquired copyrighted works into their projects so long as: a student's project is for a specific course; a teacher's project will be a teaching tool in support of curriculum-based instructional activities.

- A. **Students** may perform and display their own educational multimedia projects for educational uses in the course for which they were created and in their own portfolios as examples of their work.
- B. **Instructors** may perform and display their projects for curriculum-based instruction to students in the following situations:
 - For face-to-face instruction.
 - For work assigned to students for directed self-study.
 - For remote instruction over a secure network.
- C. **Portion limits:**
 - Motion media: Up to 10% or three minutes - whichever is less.
 - Text material: Up to 10% or 1,000 words - whichever is less.
 - Music, lyrics, music videos: Up to 10%, no more than 30 seconds.
 - Illustrations and photographs: No more than five images by one artist and no more than 10% or 15 images (whichever is less) from a published collective work.
 - Numerical data sets: Up to 10% or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table.

Copyright Resources

The VWCC Library web site

(<http://www.virginiawestern.edu/library/missionpolicies/copyright.html>)

has links to several resources that you may find helpful in understanding and implementing copyright compliance requirements.

Additional Resources:

Reproduction of Copyrighted Works by Educators and Librarians (U.S. Copyright Office)

<http://www.copyright.gov/circs/circ21.pdf>

Copyright Decision Map (University of Minnesota)

<http://www.lib.umn.edu/copyright/map.phtml>

Copyright Crash Course (University of Texas)

<http://www.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm>

**FAQs – Copyright and Faculty Teaching Classroom and Online
(North Carolina State University)**

<http://www.provost.ncsu.edu/copyright/faqs/>

Copyright and Fair Use (Stanford University Libraries)

<http://fairuse.stanford.edu/>

Copyright Issues (American Library Association)

<http://www.ala.org/ala/issuesadvocacy/copyright/index.cfm>

Is It Protected by Copyright? (Michael Brewer and ALA Office of Information)

<http://librarycopyright.net/digitalslider/>

Model Permission Letter (Copyright Advisory Office, Columbia University Libraries)

<http://www.copyright.columbia.edu/model-permissions-letters>

University of Minnesota Copyright Information and Education

<http://www.lib.umn.edu/copyright/index.phtml>