

Copyright Law

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COPYRIGHT LAW

Copyright protection covers literary works, musical works, dramatic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, all digital material available through the Internet, and sound recordings. The rights of copyright include reproduction, adaptation, distribution, public performance and display. Both unpublished and published works are covered by the copyright law. Under the law created in 1978 and amended in 1998, the duration of copyright is the life of the author plus 70 years. An out-of-print-book may still be protected by copyright.

This document describes the law and the concept of fair use as it pertains to an educational institution's

- copying of printed material for use in the classroom and on library reserve.
- copying, storing, and showing videotapes and DVDs in the classroom and on campus.
- copying any audio material (phono-records, compact disks, etc.).
- copying computer disks for the classroom, library, computer lab, etc.

Fair Use

Exceptions to the copyright law center around the concept of "fair use." That is, copyrighted material may be duplicated, displayed, etc., depending on the purpose of the use, the nature of the work, the amount used in relation to the whole, and the effect the use has on the market for the copyrighted work.

How to Obtain Copyright Permission

To obtain permission to use a copyrighted work, you must contact the holder of the copyright. To determine this for a book, check the page opposite the title page. For a periodical, check the masthead. Many educational periodicals give blanket copyright permission. Computer disks and recordings have information on the label or enclosed printed matter. The holder of the copyright of a commercial film is usually listed at the beginning of the program.

Further Questions and Assistance

Consult one of the Reference Librarians if you have further questions about copyright laws regarding books, periodicals, or any printed material. The Multimedia Specialist will answer questions about the copyright law regarding, videotapes, music, etc. The Office of Technology can answer questions about the Internet and computer software.

Books

Fair Use Guidelines

Below is an excerpt from the Report of the House Committee of the Judiciary on the copyright bill that covers what constitutes fair use in copying books and articles.

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions

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 request for his or her scholarly research, or to use in teaching, or to use in 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
- b. An excerpt of not more than 250 words from a longer poem

(ii.) Prose

- a. A complete article, story, or essay of less than 2,500 words.
- b. 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.

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

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

Spontaneity

The copying is at the inspiration of the individual teacher *and*

- (i.) 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 collected work or periodical volume during the 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 i and ii above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

III. Prohibitions to all classroom copying

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 there from 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 teaching. These include workbooks, exercises, standardized tests, test booklets, and answer sheets and like consumable material.
- C. Copying shall not
 - 1. Substitute for the purchase of books, publishers’ reprints or periodicals,
 - 2. Be directed by higher authority,
 - 3. 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 photocopy.

Library Reserve Policy for Photocopies

1. The library will place a photocopy on reserve for one term only.
2. The library will place only a single copy of an article on reserve.
3. The library will stamp the copied article with a notice which states that the copy is the personal property of the faculty member, and with the date the photocopy was received by the library
4. All items placed on reserve must conform to the above guidelines.
5. If permission is obtained from the holder of the copyright, items of greater length and multiple copies may be placed on reserve.
6. Copyright permission must be in writing and must be shown to the librarian in charge of reserve, who will retain a copy.

Library Policy for Obtaining Articles via Interlibrary Loan

1. The library will request no more than six articles from one journal within one year.
2. The library will keep interlibrary loan records of all photocopy transactions for three years.
3. The library will stamp all articles sent to other libraries with a copyright notice.

Public Domain

Material in the public domain, that is, work whose copyright has expired, is not covered by copyright law. However, collections and edited versions of work in the public domain may be copyrighted.

Government Documents

U.S. government documents, usually published by the Government Printing Office or a government agency, are not subject to the copyright laws. However, this does not cover works that receive government funding and are published by others, nor does it cover material originally published by the government that is commercially reprinted.

Out-of-Print Materials

Out-of-print materials are covered by copyright laws. However, “a library (or individual) may make a copy or phono-record of a published work... solely for the purpose of replacement of a copy or phono-record that is damaged, deteriorating, lost or stolen, if the library (or individual)... has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.”

Music

Below are quoted the “Guidelines for Educational Uses of Music” from the House Judiciary Committee report on the copyright bill (H. Rept. 94-1476) regarding fair use copying sheet music that seems most applicable.

Fair Use

1. 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 selection, 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.
2. 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 exercise or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recordings.)

Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. 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 and like material.
3. Copying for the purpose of performance.
4. Copying for the purpose of substituting for the purchase of music, except as listed above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.
6. Cassette tapes and CDs may not be duplicated unless reproduction rights were given at the time of purchase
7. Copying from one medium (such as cassette tapes) to another (such as a CD)

Videotapes, CDs, and DVDs

Videotapes, CDs, and DVDs are subject to all the rights of printed materials, including the rights of reproduction, distribution, public performance, and display. The doctrine of “fair use” also applies, that is, whether it is legal to reproduce, perform, etc. a copyrighted work depends of the purpose of the use, the nature of the work, the amount of the work used, and the effect use has on the market of the work.

In-Classroom Use

In-classroom use of a copyrighted videotape (including those marked for home use only) is permissible under the following conditions:

1. The performance must be by instructors (including guest lecturers) or by pupils; and
2. The performance is in connection with face-to-face teaching activities; and
3. The entire audience is involved in the teaching activity; and
4. The entire audience is in the same room or same general area; and
5. The teaching activities are conducted by a non-profit educational institution; and
6. The performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium, or workshop; and
7. The videotape is lawfully made; the person responsible had no reason to believe that the videotape was unlawfully made.

Classroom Showing of Videos Taped Off-Air

Showing an off-air videotape of television shows (applied to non-profit educational institutions only) is legal only in the following circumstances:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission... and retained by a non-profit educational institution for a period not to exceed the first forty-five consecutive calendar days after the date of recording. Upon conclusion of such retention period all off-air recordings must be erased or destroyed immediately.
2. 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. These recordings may be shown, in classrooms and similar places devoted to instruction during the first ten consecutive school days in the forty-five calendar day retention period.

3. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in advance of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher.
4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines.
5. After the first ten consecutive school days, off-air recordings may be used up to the end of the forty-five calendar day retention period only for teacher evaluation purposes.

Media Services (Office of Technology)

1. UD Media Services assumes that all requests for media are for classroom use. It is the responsibility of the requestor to inform the Multimedia Specialist if this is not the case so that proper copyright permission may be obtained.
2. The Multimedia Specialist will secure the needed permission for public (non-classroom) performance for tapes that will be part of the Media Services collection, if it is necessary, or for tapes to be obtained through Media Services.
3. If a faculty member wants to continue to show a tape made from an on-air broadcast after the 45 day grace period and wants to keep it for his or her own use, the faculty member is responsible for obtaining permission.
4. Media Services will provide video tape and DVD players, etc. without determining if tapes to be shown are legal or illegal, if those tapes or DVDs are not the property of Media Services.

Computer Software

Most computer software is licensed rather than sold. The terms of the agreement are usually stated on the seal, which says that breaking the seal indicates accepting the terms. One should assume that these licenses are binding contracts, apart from the copyright laws. Some companies allow limited copies to be made, some do not. Read the agreement carefully.

Fair Use Copying

The owner of a copy of a computer program may make or authorize the making of another copy or an adaptation of that program if:

1. one copy is made,
2. the new copy or adaptation is created in order to be able to use the program in conjunction with the machine and is used no other manner,
3. the new copy or adaptation is for archival purposed only and that all archival copies are destroyed if possession of the original ceases to be lawful,
4. any copies prepared or adapted may not be leased, sold or *otherwise transferred* without the authorization of the copyright owner.

In-Classroom Use

1. Observe license restrictions.
2. If only one program is owned under license, ordinarily it may only be used on one machine at a time.
3. Most licenses do not permit a single program to be loaded into a computer which can be accessed by several different terminals or into several computers for simultaneous use.

Sources Consulted

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- Helm, Brian, comp. *Nonprint Media and the Copyright Law: An Educator's Responsibilities and Rights*. Reprint. Des Moines: Iowa Department of Public Instruction.
- Reed, Mary Hutchings and Debra Stanek. *Library and Classroom Use of Copyrighted Videotapes and Computer Software*. Chicago, ALA, 1986.

PROCEDURES FOR OBTAINING PERMISSION TO COPY

1. Obtain Name and Address of Publisher, Movie Studio, Television Station, etc.

Determine who owns the copyright on the material.

Book: The page containing a notice of copyright can help you determine who owns the copyright.

Article: For an article, contact the publisher, listed on the masthead. NOTE: Many journals give blanket permission to copy. This will appear on the masthead or on the Table of Contents page.

Picture, photograph, cartoon, etc.: For a picture, cartoon, or piece of graphic art, contact the publisher of the book or periodical. NOTE: Often the artist holds the copyright to his or her pictures. In a book, this is usually noted on the page opposite the title page.

Music: Usually on the bottom of the first page.

Computer program: The company's name is somewhere on the packaging and usually on the disk itself.

Video: In a commercial film or video, check the cassette box. For a television program, contact the television station that aired the show. (It is best to *call* the station rather than write. They can usually refer you to the company or studio that made the program. Ask the Multimedia Specialist for assistance, if needed.)

If addresses or phone numbers are not easy to locate on the work, ask a Reference Librarian for help.

2. Request Permission to Duplicate

a) Provide full and accurate information about the work to be duplicated with an accounting of the exact material to be used.

Book: the title, author, and/or editor: copyright or publication date and edition of the book in which the materials to be duplicated appear. Provide photocopy of title page and verso, if possible

Article: a full citation, including the volume, date and pages

Television program: the date aired, the station on which the show appeared, as well as the title of the show. Do you want rights to use only in-classroom or also for public showings? Do you want permission for one year or for the life of the tape?

b) Indicate number of copies to be made.

c) Indicate use to be made of duplicated materials and form of distribution (e.g. as course material and whether collected with other excerpts or materials, whether bound or unbound).

d) Indicate whether material is to be sold.

3. What to Send publisher or Copyright Holder

Send the above information to the permissions department of the publisher, studio, etc. Usually blanket permission will not be granted. Do not assume if you have not heard from the holder of the copyright that you have permission.

Adapted from: The National Association of College Stores, Inc. *Questions and Answers on the Copyright for the Campus Community*. Oberlin, The Association, 1989.

UNIVERSITY OF DUBUQUE

APPLICATION FOR PERMISSION REQUEST TO USE COPYRIGHTED MATERIALS FOR EDUCATIONAL USE

To the Copyright Owner:

The University of Dubuque is a private, nonprofit university located in Dubuque, Iowa.

The University of Dubuque, by and through, _____, a member of the faculty or staff of the University of Dubuque, hereby requests permission to use the following copyrighted materials:

Author: _____

Title: _____ Edition: _____

Publisher: _____

Number of students in the course: _____

Description of amount of material to be copied: _____

Will the material be sold? _____

The duplicated materials will be used for _____

The duplicated materials will be distributed by _____

The type of reprint (photocopy, offset, etc.) _____

Name of faculty or staff

I, the undersigned, acknowledge and warrant that I have the authority and right to grant permission for the use of the above copyrighted materials and that such permission is hereby granted to the University of Dubuque and _____ to be used for educational purposes.

Copyright owner or agent

Date