

ADMINISTRATIVE PROCEDURE IF

INSTRUCTIONAL PROGRAM
INSTRUCTIONAL RESOURCES
COPYRIGHT LAW AND FAIR USE

~~NOVEMBER 16, 2001~~
October 14, 2024

The Copyright Act provides several exceptions to the general rule prohibiting use of copyrighted material, including the fair use doctrine.

This administrative guideline specifically sets forth permissible educational uses of copyrighted material. These guidelines are adapted from more in-depth publications developed and/or adopted by various organizations, as cited herein. Staff members who fail to follow this policy may be held personally liable for copyright infringement.

Definition

Under the **fair use doctrine**, unauthorized reproduction of copyrighted materials is permissible for such purposes as criticism, comment, news reporting, teaching, scholarship or research. If duplicating or changing a product is to fall within the bounds of fair use, these four (4) standards must be met for any of the foregoing purposes:

1. **THE PURPOSE AND CHARACTER OF THE USE.** The use must be for such purposes as teaching or scholarship and must be nonprofit.
2. **THE NATURE OF THE COPYRIGHTED WORK.** Staff may make single copies of: book chapters for use in research, instruction or preparation for teaching; articles from periodicals or newspapers; short stories, essays or poems; and charts, graphs, diagrams, drawings, cartoons or pictures from books, periodicals or newspapers in accordance with these guidelines.
3. **THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED.** Copying the whole of a work cannot be considered fair use; copying a small portion may be if these guidelines are followed.
4. **THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK.** If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials may be an infringement, and making multiple copies presents the danger of greater penalties.

Copying District Materials

Staff may make copies of copyrighted school district materials that fall within the following guidelines. Where there is reason to believe the material to be copied does not fall within these guidelines, prior permission shall be obtained from the principal.

Permitted Copies

Multiple copies, not exceeding more than one (1) per student, may be made for classroom use or discussion if the copying meets the tests of brevity, spontaneity and cumulative effect set by the following guidelines. Each copy must include a notice of copyright.

A library or archive may reproduce one (1) copy or recording of a copyrighted work and distribute it if: the reproduction or distribution is made without any purpose of direct or indirect commercial advantage; the collection of the library or archives is open to the public, or available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and if the reproduction or distribution of a work includes a notice of copyright. Libraries and their employees are not liable for unsupervised use.

Copies of materials for face-to-face teaching activities involving performances or displays made by students or instructors, religious services, live performances without commercial advantage, and the use of instructional broadcasts are permitted.

Prohibited Copies

The Act prohibits using copies to replace or substitute for anthologies, consumable works, compilations or collective works. Consumable works include: workbooks, exercises, standardized tests, test booklets and answer sheets. Teachers cannot substitute copies for the purchase of books, publishers' reprints or periodicals, nor can they repeatedly copy the same item from term to term. Copying cannot be directed by a "higher authority" and students cannot be charged more than actual cost of photocopying.

Legal

1. 17 U.S.C. 101 et seq

Administrative Regulations - 814-AR, 814-AR-1

ADMINISTRATIVE PROCEDURE

IF(1)

**INSTRUCTIONAL PROGRAM
INSTRUCTIONAL RESOURCES
COPYRIGHT LAW**

**NOVEMBER 16, 2001
October 14, 2024**

Works that may be protected by copyright include literary works, musical works, dramatic works, pictures, graphics, sculptures, films, videotapes, sound recordings, and computer programs. Copyright protection does not extend to ideas, facts, slogans, symbols, procedures, methods, or systems. U.S. Government publications are not protected, unless they contain a notice stating otherwise.

This administrative guideline specifically sets forth permissible educational uses of copyrighted material. These guidelines are adapted from more in-depth publications developed and/or adopted by various organizations, as cited herein. For further information, consult these cited references.

Use Copyrighted Media

Music

Permissible Uses

A. 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.

B. For academic purposes other than performance, single or multiple copies of excerpts for 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 ten percent (10%) of the whole work. The number of copies shall not exceed one (1) copy per student.

C. Printed copies that 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.

D. 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.

E. 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 of the music itself and not to any copyright that may exist in the sound recording.)

Prohibitions

- A. Copying to create or replace or substitute for anthologies, compilations or collective works.
- B. 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.
- C. Copying for the purpose of performance, except for emergency copying, as described above.
- D. Copying for the purpose of substituting for the purchase of music, except described under permissible uses A and B above.
- E. Copying without inclusion of the copyright notice that appears on the printed copy.

Performance and Display

Any copyrighted work may be performed or displayed, if the performance takes place in a classroom or similar place of instruction, such as a school library; and the performance or display is directly related to the curriculum and not connected with recreation or a reward.

Performance or display of dramatic works, such as plays, movies, are prohibited unless permission is obtained from the copyright owner.

Note: Digital distance education and transmission of copyrighted works over today's digital networks is currently a very controversial area. Contact the local Copyright Officer for up-to-date guidelines.

Computer Programs

License Restrictions

If a computer program is licensed, refer to the license agreement. By installing or using a licensed software product, you are legally bound by its agreement.

Typical license restrictions include:

- A. An archival (backup) copy of a copyrighted program may be made if:
 - 1. only one (1) copy is made;
 - 2. the archival copy is stored; and
 - 3. copyright notice appears on the copy.
- B. If only one (1) program is owned under license, **it may only be used on one machine at a time.**

C. A single program may **not** be loaded into a computer that can be accessed by several different terminals for simultaneous use.

D. If the computer is capable of being used by another to make a copy of the program, a warning should be posted on the computer, such as the following:

Many computer programs are protected by copyright. 17 U.S.C. 101. Unauthorized copying may be prohibited by law.

A Statement on Use of Copyrighted Computer Programs (Software) in Libraries -- Scenarios, adopted by the Conference on Fair Use (CONFU), illustrates many uses of computer programs.

Digital Images and Databases

Images that are readily available in usable digital form for purchase or license at a fair price should not be digitized for addition to an institutional image collection without permission.

Exception for Spontaneous Use

If 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, teachers and students may digitize lawfully acquired images to support the permitted educational uses described below. Images digitized for spontaneous use do not automatically become part of the institution's image collection. Permission must be sought for any reuse of such digitized images or their addition to the institution's image collection.

Time Limitations on Use of Digital Images

A. Images digitized from a **known** source and **not readily available** in usable digital form for purchase or license at a fair price may be used for one (1) academic term.

B. Where the copyright owner of an image is **unknown**, a digitized image may be used for up to three (3) years from first use, provided that a **reasonable inquiry** is conducted to identify and locate the copyright owner.

Subject to the Above Guidelines, the Following Uses are Permitted:

A. Use by Teachers in the Classroom

1. An educator may display digital images for educational purposes, including face-to-face teaching of curriculum-based courses, and research and scholarly activities at a non-profit educational institution.

2. An educator may compile digital images for display on the institution's secure electronic network to students enrolled in a course given by that educator for classroom use, after-class review, or directed study, during the semester or term in which the educator's related course is given.

B. Use by Teachers at Conferences of Their Peers

Educators, scholars, and students may use or display digital images in connection with lectures or presentations in their fields, including uses at non-commercial professional development seminars, workshops, and conferences where educators meet to discuss issues relevant to their disciplines or present works they created for educational purposes in the course of research, study, or teaching.

C. Use of Images for Publications

These guidelines do not cover reproducing and publishing images in publications, including scholarly publications in print or digital form, for which permission is generally required. Before publishing any images under fair use, even for scholarly and critical purposes, scholars and scholarly publishers should conduct the four-factor fair use analysis.

D. Use by Students

1. A student may use digital images in an academic course assignment such as a term paper or thesis, or in fulfillment of degree requirements.
2. A student may publicly display their academic work incorporating digital images in courses for which they are registered and during formal critiques at a nonprofit educational institution.
3. A student may retain their academic work in their personal portfolios for later uses such as graduate school and employment applications.

Databases

Generally, the information made available to researchers from commercial online electronic databases is copyrighted. Read the terms and conditions for a database before using or downloading.

Multimedia Projects

Caution in Downloading Material From the Internet

Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

Permitted Uses

Students may perform and display their own educational multimedia projects for the course for which they were created and may use them in their own portfolios as examples of academic work.

Educators may perform and display their own education multimedia projects for face-to-face instruction, assigning to students for directed self-study, peer conferences, and professional portfolios.

Libraries

In-Library Use of a Copyrighted Media

A. When media, such as videotapes or DVDs are purchase is made by the library, the vendor should be made aware of the library's intended use of the videotape. Even if a videotape or DVD is labeled "For Home Use only," private viewing in the library should be authorized by the vendor's sale to the library if the vendor knew of the library's intended use of the videotape.

B. Permission is required for public viewing of digital media in a library unless the requirements for classroom use are met.

C. Notices should be posted on video recorders or players used in the library to educate and warn patrons about the existence of the copyright laws. An acceptable notice includes the following:

Many videotaped materials are protected by copyright. Unauthorized copying may be prohibited by law.

Library Copying Guidelines

Non-Digital Works

A. Notice

A notice of copyright should appear on each print and electronic copy reproduced. If the original work contains a notice of copyright, that notice should appear on the copy. If the original work does not contain a notice of copyright, the copy should include a legend such as "This work may be protected by copyright; further reproduction and distribution in violation of United States copyright law is prohibited."

B. Copying from the Library's Own Collection

To satisfy a user's request, a library may make a photocopy or other printed copy of a printed work such as an article, a chapter or portions of other copyrighted works.

C. Electronic Copies of Printed Works

To satisfy a user's request, a library may scan an article from a periodical issue, a chapter, or portions of other copyrighted works and provide an electronic copy to the user in lieu of a photocopy. Because the copy must become the property of the user, the library may not retain the scanned image. A copy may be faxed or otherwise transmitted electronically to the user, but the library should destroy any temporary copy made incidental to the transmission. In other words, an incidental copy made to facilitate transmission is a fair use, as long as that copy is not retained.

Digital Works

A. Printed Copies of Digital Works

To satisfy a user's request, a library may print a copy of an article, a chapter, or portions of other copyrighted works, **unless prohibited or otherwise restricted by the terms of a valid license agreement.**

B. Electronic Copies of Digital Works

To satisfy a user's request, a library may download a copy of an article, a chapter, or portions of other copyrighted works and forward it electronically to the user, **unless prohibited or otherwise restricted by the terms of a valid license agreement.**

Copies For Archival or Preservation Purposes

A. A library may make up to three (3) copies of an unpublished work for purposes of preservation, including copies in digital form, if that format is not made available to the public.

B. A library may make up to three (3) copies of a published work to replace a damaged, deteriorating, lost, or stolen work, if a replacement copy cannot be obtained at a reasonable cost.

C. A library may make up to three (3) digital copies of a published work that is an obsolete format, if that format is not made available to the public.

Interlibrary Photocopying

The **rule of five** - within any calendar year, a library may receive no more than five (5) photocopies of articles from a periodical title less than five (5) years old.

Giving Credit to Copyright Owners

Always give proper credit to authors or other copyright owners. Crediting the source must adequately identify the source of the work, giving a full bibliographic description including author, title, publisher, and place and date of publication. Copyright ownership information should include the copyright notice (©), year of first publication, and name of copyright holder.

Always include the notice of copyright present in the original work. The following is a satisfactory notice:

Notice: This material may be protected by copyright law

If alterations have been made in the copyrighted material, this should be noted in the credits.

Obtaining Permission For Use of Copyrighted Material

Employees must obtain permission for any use of copyrighted material that is not a fair use under the above guidelines. To obtain permission, the employee should contact the Copyright Clearance Center, Inc., or the Permissions Department of the copyright holder (usually the publisher).

Copyright Clearance Center, Inc.
222 Rosewood Drive
Danvers, MA 01923
(978) 750-8400
www.copyright.com

To request permission from the publisher, the request must be in writing and should be sent, together with an envelope addressed to the sender, to the permissions department of the publisher of the work. The request should include the title, author or editor, and edition of materials for which permission is sought; the exact materials to be used, with specification of amount, page numbers, chapters, including, 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; whether or not the copies will be sold; and the process by which the material will be reproduced.

A reasonable inquiry must be made to identify and locate the copyright owner. A reasonable inquiry includes, but is not limited to, conducting each of the following steps: (1) checking any information within the control of the educational institution, including slide catalogs and logs, regarding the source of the image; (2) asking relevant faculty, departmental staff, and librarians, including visual resource collections administrators, for any information regarding the source of the image; (3) consulting standard reference publications and databases for information regarding the source of the image; and (4) consulting rights reproduction collectives and/or major professional associations representing image creators in the appropriate medium.

REFERENCES

¹These guidelines are adapted from H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. 71-72 (1976), available at <http://www4.law.cornell.edu/uscode/17/107.notes.html>

Adapted from the Music Library Association's "Guidelines for Off-Air Recordings of Broadcast Programming for Educational Purposes," available at <http://www.lib.jmu.edu/org/mla/Guidelines/>

Adapted from the American Library Association's Fact Sheet 7, "Video and Copyright," available at <http://www.ala.org/library/fact7.html>

These guidelines are adapted from H.R. Rep. No. 94-1476, 94th Cog., 2d Sess. (1976), available at <http://www4.law.cornell.edu/uscode/17/107.notes.html>

See pg. 4, In-Classroom Use of a Copyrighted Videotape

See pg. 14, Obtaining Permission for Use of Copyrighted Material

See 17 U.S.C.A. 107 (West 2002) (also known as the "Fair Use Doctrine"); 17 U.S.C.A. 117 (West 2002) (allowing an owner to make a copy of a computer program in certain limited situations); 17 U.S.C.A. 109(b)(2) (West 2002) (also known as the "First Sale Doctrine") (allowing nonprofit libraries to lend computer providing a warning of copyright is affixed to the program (37 C.F.R. 201.24, "Warning of copyright for software lending by nonprofit libraries")).

Final Report of the Conference on Fair Use, CONFU, available at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

The Association of Research Libraries (ARL) provides guidelines for negotiating license agreements for computer software, available at <http://www.arl.org/scomm/licensing/index.html>

These guidelines are adapted from the Fair Use Guidelines for Digital Images, released by the Conference on Fair Use (CONFU) in 1997 with the endorsement of the U.S. Copyright Office. Portions of the CONFU Guidelines are available at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

See pg. 15 for a description of what constitutes a "reasonable inquiry"

These guidelines are adapted from the Fair Use Guidelines for Educational Multimedia, released by the Conference on Fair Use (CONFU) in 1997 with the endorsement of the U.S. Copyright Office. The CONFU Guidelines are available at <http://www.uspto.gov/web/office/dcom/olia/confu/confurep.pdf>. They are currently undergoing a trial use and monitoring period.

These guidelines are adapted from the American Association of Law Libraries' "AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries," as revised in 2001, available at <http://copyright.ala.org/library.html>.

These guidelines are adapted from "AALL Guidelines on the Fair Use of Copyrighted Works by Law Libraries," as revised 2001, available at http://www.aallnet.org/about/policy_fair.asp

2017 U.S.C.A. 108 provides exemptions for reproduction by libraries. The 1998 Digital Millennium Copyright Act and Sonny Bono Copyright Term Extension Act significantly revised Section 108. The Digital Millennium Copyright Act (DMCA) amends Section 108 (b) & (c) to refer to **digital** copies for the first time. The Sonny Bono Copyright Extension Act amends Section 108(h) to include digital. However, revised digital wording is conspicuously absent from Section 108(a) -- the main part of the statute that covers most library copying for patrons. Therefore, a distinction should be made between digital works and non-digital works for purposes of library copying.

License restrictions can override statutory exemptions. See pg. 6 for a discussion on license restrictions.

These guidelines are adapted from the American Library Association's "Section 108 Photocopying by Libraries and Archives," available at <http://copyright.ala.org/library.html>

For more information about interlibrary photocopying, see the National Commission on New Technological Uses of Copyright Works' "CONTU Guidelines on Photocopying Under Interlibrary Loan Arrangements," available at <http://www.ifla.org/documents/libraries/policies/contu.txt>

Fair Use Guidelines for Educational Multimedia, released by the Conference on Fair Use (CONFU) in 1997 with the endorsement of the U.S. Copyright Office. Portions of the CONFU Guidelines are available at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

Fair Use Guidelines for Educational Multimedia, released by the Conference on Fair Use (CONFU) in 1997 with the endorsement of the U.S. Copyright Office. Portions of the CONFU Guidelines are available at <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

© Neola 2003