

Administrative: Copyright Policy

I. Scope

This policy is an institutional policy and applies campus wide.

II. Purpose

The purpose of this policy is to define correct and legal use of copyrighted materials, especially in relation to in-class instruction, including multimedia and textbook use.

III. Fair Use Guidelines

In determining whether the use made of a work is 'fair use' or an infringement of copyright, the following factors are considered:

- The type of use such as non-profit educational use or commercial benefit;
- The nature of the copyrighted work (a table copied from an almanac has a better chance of a 'fair use' defense than an original work such as a test instrument or a chapter from a textbook);
- The amount or portion of the work copied in relation to copyrighted work as a whole (usually 2 to 5%; never more than 10%); and
- The market effect or how much of an effect the unapproved copies will have on the potential market value of the copyrighted work.

IV. Guidelines for Using

An overview of section 110 (1) of the Copyright Law states explicitly that any film, videocassette, or videodisc legitimately acquired (that is, either purchased from legitimate sources or leased from a licensed distributor) may be performed or displayed by instructors or pupils in face-to-face teaching activities in non-profit educational institutions when the following conditions are met:

- They must be shown only for instructional purposes in courses given for academic credit and not for entertainment or recreation;
- They must be shown only in classrooms or other locations devoted to instruction;
- They must be shown by the instructors or pupils; and they must be shown to an audience limited to the instructor(s), the students taking the class, and the guest lecturer(s).

An instructor may duplicate a small part (up to 10 %) of a film, videocassette, or videodisc for research or instruction if the 10% is not the "essence" of the work. An instructor may not reproduce an audiovisual work in its entirety or convert one media format into another without permission.

V. Guidelines for Taping Television Program

In 1981, an Ad Hoc Committee on Copyright Law announced that a negotiating committee of 19 educational users and copyright proprietors agreed on a set of guidelines under the “fair use” doctrine for the use of off-air videotapes in the classroom. These guidelines, while not part of the legislative history on the Copyright Law were published in the October 14, 1979 Congressional Record (pp. E4740-E4752), more than a year before the Supreme Court’s decision that off-air videotaping of free over-the-air television programs for “in home use” to be fair use. It is important to note that in deciding that case, the Supreme Court also found that massive, systemic off-air videotaping and the making of multiple copies of off-air videotapes not to be fair use because of the substantial effect such practices were likely to have on the market for commercially produced videotapes. The following guidelines were developed to apply to off-air recordings for or by non- profit educational institutions:

- A broadcast program (transmitted by television stations for reception by the general public without charge) may be recorded off-air simultaneously with the broadcast transmission and retained by a non-profit educational institution for a period not to exceed forty-five (45) calendar days after the date of the recording. Upon conclusion of such retention period, the off-air recording must be destroyed immediately.
- Off-air recordings may be used only by an individual instructors in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary, in classroom and similar places devoted to instruction during the first ten (10) consecutive class days (not counting weekends, holidays, or examination periods) in the forty-five calendar retention period.
- Off-air recordings may be made only at the request of and used by an individual instructor and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once by/for the same instructor, regardless of the number of times the program may be broadcast.
- 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, i.e. to determine whether or not to include the broadcast program in the teaching curriculum.
- All copies of off-air recordings must include the copyright notices on the broadcast program as recorded.
- Off-air recordings need not be used in their entirety, but the content of the original programs may not be altered. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
- A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each additional copy shall be subject to the same provisions governing the initial off-air recording.
- Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

VI. Satellite Video Download

Satellite programming is protected by the Federal Communications Act (Title 47 US Code). An increasing number of educational satellite programs are now available through membership or by contract. Reception without a license or membership is illegal.

VII. Audio Recordings

A single copy of a sound recording (tape, disc, cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual instructor for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. Copying as a way of avoiding purchase is forbidden, given the reasonable availability of the material. It is definitely not permissible to duplicate entire audiotapes or to adapt entire CD's to cassette tapes whether they are an independent unit or a component of an instructional program (such as language tapes). Making copies to meet student demands is an infringement of the Copyright Law.

VIII. Computer Software

The 1976 Copyright Law was amended in December 1980 to define computer software as a literary work, which gives software copyright protection immediately upon creation. Since the Law and the 1980 Amendments are vague, it is imperative that educators read the software's copyright page and understand the licensing restrictions printed there. The International Council for Computers in Education (ICCE) has issued a "Suggested Policy Statement on Duplicating and Using Computer Software in Academic Settings."

Accordingly, a computer user is allowed to:

- Make one copy of software for archival purposes in case the original is destroyed or damaged through mechanical failure of a computer. However, if the original is sold or given away, the archival copy must be destroyed, and the archival copy may not be used on a second computer at the time the original is in use.
- Make necessary adaptations to the program and add features to the program for specific applications. These improvements may not be sold or given away without the copyright owner's permission.

The ICCE also suggests that in the absence of a license expressly permitting the user to do so, the loading of the contents of one disc into many computers for use at the same time is not allowed. Likewise, before placing a software program on a local area network (LAN) or disk sharing system for use by multiple users at the same time, the instructor must obtain a written license agreement from the copyright holder granting permission to do so.

IX. Databases

Databases are copyrightable and copying from a database to a computer appears to be a copyright infringement. The copyright owners generally accept temporary downloading as a fair use as long as only one report is printed, and the data is erased after printing the report. Long-term retention to reuse or to combine in creating a local database requires a downloading license.

X. Scanning

Scanning or electro-copying a text may be a “fair use” if it is used only for research (e.g., for textual analysis). Any other scanning of copyrighted texts is subject to Copyright Law and requires the permission of the copyright owner unless it meets the criteria of brevity and spontaneity for print. These criteria are poems less than 250 words, complete item of prose less than 2500, or an excerpt of less than 1000 words or 10% of its entirety. Artworks should not be electro-copied without permission unless they are in the public domain. Electro-copying by students as a ‘learning exercise’ is permissible, but copies should be promptly erased.

XI. Internet

Individuals who use the internet and other networks constantly find ideas and information they would like to use, compile, collect and modify. It is possible for users to download texts and images, e-mail them to another site and/or combine them with other texts and images which can ultimately result in a new “work” (such as a web page) or a work that does not bear much resemblance to the original.

When the United States joined the Berne Convention in 1989, placement of a copyright notice on a work became optional. Copyright protection exists from the moment of creation and “fixation in a tangible manner” regardless of what source the information comes from. If a user incorporates texts or images from an electronic source, that person must check to see if there is a copyright notice at the beginning of the material. If there is no copyright notice or if there is a notice but there is not a statement to the effect that uses are permitted, the materials are subject to copyright law.

If the instructor is creating a web page, contributing to an electronic journal, or posting an original work to an electronic bulletin board, it is suggested that the instructor affix a copyright notice (small “c” in a circle ©, date, and owner’s name) and a statement as to whether uses are or are not permitted. This makes it easier for other individuals to contact the copyright owner for permission to use and more difficult for infringers to claim innocence. It is also advisable to keep a print copy of the copyright notice and to register the material with the Copyright Office (U.S. Copyright Office, Library of Congress, 101 Independence Ave., Washington DC, 20559).

XII. Educators Use of Multimedia Projects

On July 17, 1996, the Consortium of College and University Media Centers issued guidelines on ‘fair use’ of copyrighted materials by educators. These guidelines allow students to use, under the fair use doctrine, lawfully acquired copyrighted materials in multimedia programs for educational purposes and allow the students to retain the material for such uses as seeking employment or applying to graduate school. In face-to-face teaching situations, educators may show students how to produce multimedia programs and may produce multimedia programs themselves as teaching tools. Educators may also exchange displays of the multi-media programs they have created with

colleagues, and they may use their own programs, with some restrictions, over their own institution's electronic network for remote instruction.

It is important to recognize that these draft guidelines do not carry the weight of law and that many such guidelines are the subject of much disagreement among librarians and educators.

Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including, but not limited to, motion media, music, text material, graphics, illustrations, photographs, and digital software which are combined into an integrated presentation.

XIII. Guidelines for Use of Copyrighted Materials in Multimedia Projects

A. Instructors' Use of Multimedia

Instructors may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

Instructors may perform and display their own educational multimedia projects created for curriculum-based instruction to students in the following situations:

1. For face-to-face instruction;
2. As assignments to students for directed self-study; and
3. For remote instruction to students enrolled in curriculum-based courses and located at remote sites.

Instructors may also perform or display their own education multimedia projects in presentation to their peers, for example at workshops and conferences.

Instructors may retain educational multimedia projects in their personal portfolios for later personal uses such as tenure review or job interviews.

B. Time Limitations - Multimedia Projects

Instructors may use their educational multimedia projects created for educational purposes for teaching courses for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated into the production.

C. Portion Limitations

Portion limitations means that the amount of a copyrighted work which can reasonably be used in educational multimedia projects under these guidelines depends on the original medium from which the copyrighted works are taken.

1. Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted work may be reproduced or otherwise incorporated as part of an educational multimedia project.

2. Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of prose text material. An entire poem of less than 250 words may be used, but no more than three poems by one poet or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used, but no more than three excerpts by a single poet or five excerpts by different poets from a single anthology may be used.

3. Music, Lyrics, and Music Video

Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or the aggregate of extracts from individual work) whether the musical work is embodied in print copies, or audio, or audiovisual works. Any alteration to a musical work shall not change the basic melody or the fundamental character of the work.

4. Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or incorporated into an educational multimedia project. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

5. Illustrations and Photographs

Under these guidelines a photograph or illustration may be used in its entirety, but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational media project. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be used.

D. Copying and Distribution Limitations: Guidelines for Use of Journal Articles on Reserve

In accordance with *Libraries and Copyright Law*, Teachers may make a single copy of journal articles with the following restrictions:

- Copies may not be used for anthologies, compilations, or collective works.
- Copying may not be used as a substitute for purchasing.
- Copying cannot be repeated “with respect to the same item by the same teacher from term to term.”

E. Reminders

The guidelines also include the following reminders:

- Materials found on the Internet must be used with caution since they may be copyrighted;
- Proper attribution must always be given. Instructors and students are reminded to credit the sources and display the copyright notice © and copyright ownership information if this is shown in the original source. Crediting the source must include the author, title, publisher, and place and date of publication. The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project except for images incorporated into the project. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and if, such information is reasonably available. Credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed. In those cases where displaying source credits and copyright ownership on the screen with the image would be mutually exclusive with an instructional objective, (e.g., during examinations) this information may be linked to the image in another manner;
- Notice of the program’s adherence to the multimedia guidelines should appear on the first screen;
- Those creating multimedia programs which have a potential to be either broadly and/or commercially disseminated should seek permission while the program is under development;
- The integrity of the original work should be maintained, with alterations being made only in support of specific instructional objectives;
- The reproduction or recompilation of copyrighted computer programs is not permitted; and
- License or contract terms should be respected.

XIV. Guidelines for Obtaining Permission to Use any Copyrighted Materials

Obtain name and address of publisher and determine who owns the copyright on the material. This may be done by checking one or more of the following:

- Page containing notice of copyright for:
 - Owner of copyright.
 - Year of publication.
 - Publishers address.
- Acknowledgement page, or
- Directories for publishers’ addresses available from the library or the bookstore, such as the following:
 - Books in Print.
 - Publishers Distributors & Wholesalers of the United States.
 - The Literary Marketplace
 - The International Literary Marketplace.
 - Ulrich’s International Periodical.

Request permission to duplicate by sending the following information to the publisher's Permissions Department:

- Title, author and/or editor; copyright or publication date and edition of book or audiovisual unit in which materials to be duplicated appear;
- Exact material to be used, giving amount, page numbers, chapters, frame and, if possible, a photocopy of the material, title and copyright page;
- Number of copies to be made;
- 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, slides, audio tapes, etc.);
- Whether or not the material is to be sold (e.g., if photocopies are to be sold to students at the cost of the photocopying); and
- Type of reprint (ditto, photocopy, offset, typeset, ½" VHS, DVD, 2x2 slides, color thermal transparency, audio tape, scanned or digitized images, etc.).

What to send the publisher or copyright holder:

- Two copies of the request letter: one to be returned to the instructor granting or denying permission to use the copyrighted material, and one for the publisher or copyright owner to keep; and
- A self-addressed stamped envelope.

The instructor should be sure to allow enough lead time to obtain the necessary permission before the materials are needed as each request requires a careful checking of the status of the copyright, determination of exact materials to be duplicated and assignment of author's royalties, if fees are involved. If more than one permission is requested from the same copyright owner for a specific project, try to request all permissions at the same time.

XV. Questions and Interpretation

All questions concerning this policy should be directed to the Policy Administrator/Owner at policies@setonhill.edu.

XVI. Links to Related Policies

University Brand and Logo Use Policy