

Copyright Infringement Policy

Purpose

It is the policy of the University of Mary to comply with all copyright laws and to not exceed the bounds of permissible copying under the fair use doctrine. All faculty, staff and students are expected to comply with this policy, with state and federal law, and with the terms of applicable contracts and license agreement(s) in reproducing copyrighted materials.

Statement of the Policy

Copyright Basics.

The following excerpts from the United States Copyright Office website set forth basic copyright principles. Additional information can be found at:

<http://www.copyright.gov/circs/circ1.html>

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship”, including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Copyright protection starts when the work is created in fixed form. The copyright immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

Copyrightable works include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings
8. architectural works

These categories are broad. For example, computer programs and most “compilations” may be registered as “literary works”; maps and architectural plans may be registered as “pictorial, graphic, and sculptural works.”

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. Copyright is secured automatically when the work is created, and a work is “created” when it is fixed in a copy or phonorecord for the first time.

Mere ownership of a book, manuscript, painting, or any other copy or phonorecord does not give the possessor the copyright. The law provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright. It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope.

Fair Use.

An exception to the protection afforded by copyright laws is the doctrine of fair use. A fair use of a copyrighted work may include the practice of any of the exclusive rights provided by copyright, for example, reproduction for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. The "fair use" limitation is not defined in statute and does not provide a bright line rule for determining what is or is not a fair use. Rather it identifies four factors that should be evaluated on a case-by-case basis in order to determine if a specific use is "fair". These factors, which should be considered together when determining fair use, are:

1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work;
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. Effect of the use upon the potential market for or value of the copyrighted work.

The distinction between "fair use" and infringement can be unclear and is not easily defined. There is no right number of words, lines or notes that qualify as a fair use.

Guidelines.

1. Books, Periodicals and Sheet Music

Interested parties (educators and the owners of copyrights) have worked together to establish guidelines for classroom photocopying. The agreement they reached, called the *Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions With Respect to Books and Periodicals*, was included in the *Congressional Record* and has been relied upon by several courts in their analyses of fair use. The guidelines can be found at:

http://www.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000107----000-notes.html or <http://www.copyright.gov/circs/circ21.pdf>

2. Off-Air Recording of Television Broadcasts

Playbacks of pre-recorded television programs are sometimes used by educators. If a formal licensing agreement with the program producers or television stations has not been obtained, educators can safely rely on the “Guidelines for the Off-the-Air Recording of Broadcast Programming for Educational Purposes (the “Broadcast Guidelines”). These guidelines apply to nonprofit educational institutions and television programs transmitted to the general public without charge (i.e., only shows received with the use of a standard UHF-VHF antenna) The Broadcast Guidelines are found at:

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

3. Academic Coursepacks

Academic coursepacks are collections of materials (usually photocopied) used in the classroom, distributed either in book format or as class handouts. (Coursepacks are commonly offered for sale in campus bookstores.) Unless the guidelines set out in Section 1 for classroom photocopying are met, clearances from the publisher must be obtained. For more information see:

[http://fairuse.stanford.edu/Copyright and Fair Use Overview/chapter7/7-a.html](http://fairuse.stanford.edu/Copyright%20and%20Fair%20Use%20Overview/chapter7/7-a.html)

4. Educational Multimedia

Educational multimedia projects 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. Educational multimedia projects which incorporate portions of copyrighted works under the guidelines may be used only for specified educational purposes. The full text of the guidelines for education multimedia can be found at:

<http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>

5. Distance Learning.

Distance learning education at the University of Mary necessarily requires the digital transmission of copyrighted materials. All faculty, staff and students engaged in distance learning are required to comply with this policy and all applicable copyright laws. Students engaged in distance learning are authorized to access course materials for their personal educational use only and any other use, reproduction or transmission is strictly prohibited by the University of Mary. Congress has passed a specific law regarding the distance learning use of copyrighted materials known as the Technology,

Education and Copyright Harmonization Act of 2002 (TEACH Act). Information on the TEACH Act can be found at the following links:

<http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm>
<http://www.copyright.com/media/pdfs/CR-Teach-Act.pdf>

All faculty developing and/or using distance learning courses must have such courses reviewed and approved by the audit process of the vice-president of academic affairs of the university. All distance learning courses shall include a conspicuous notice which is displayed each time the distance learning material is accessed by a student enrolled in the course. The notice shall inform the student that course content may include copyrighted material which is not to be copied, transmitted, or used without permission or legal authority--such as fair use or the TEACH Act.

6. Performances of Music and Video.

Showing a purchased or rented videotape or DVD, or playing a record, audiotape, MP3 or CD is a performance of a copyrighted work. Most unlicensed public performances for entertainment are an infringement, whether a fee is charged or not.

A performance is public if it is in a public place or if it is in any place where "a substantial number of persons outside of a normal circle of a family and its acquaintances" is gathered. For a performance that takes place in a public place (i.e., where it is open to the public), how many and what kind of people attend are not important; by definition, it is a public performance. For a performance that is not open to the public (i.e., where the public can be excluded), the size and composition of the audience are determinative factors. Private performances are not an infringement.

If a videotape or DVD is labeled "For Home Use Only," the showing must be licensed or fall under the face-to-face classroom teaching exemption, or be permissible as "fair use." If the performance is *public and unlicensed*, it may actually be infringement of copyright because the owner of a copyrighted work enjoys the exclusive right to perform that work publicly and to authorize others to do so.

Teaching:

Showing of copyrighted films, videotapes, or DVDs is permissible in conjunction with teaching activities. Classroom use of a copyrighted video is permissible only when all of the following conditions are met:

- The performance must be by instructors, guest lecturers or by pupils enrolled in the class.
- There is no direct or indirect admission charge.

- The performance is directly related to the teaching content, is in connection with face-to-face teaching activities and is a regular part of the instructional activities (this does not include non-instructional performances, regardless of their cultural value or intellectual appeal, that are given for recreation or entertainment purposes, or for reward or for motivation).
- The entire audience is involved in the teaching activity (students and educators).
- The entire audience is in the same room or same general area.
- The teaching activities are conducted by a non-profit education institution.
- The performance must be either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
- The performance uses a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Examples requiring permission:

- Playing rented videotapes or DVDs for entertainment purposes, such as in dorm common areas, will often be a public performance, depending on how many people are watching. The same video or DVD played in a dorm room with just two or three people will not be a public performance, and will not need to be licensed.
- Playing recorded music in an exercise class requires permission.
- Musicians who play others' music at parties or other events must be licensed.
- Music-on-hold and "elevator" music in waiting areas must be licensed.

If a performance license is needed, the university's director of library services will assist you in seeking permission. Student organizations showing films for entertainment purposes are responsible for paying royalties.

Conclusion

The diligent use of these guidelines will protect faculty, staff and students from most charges of copyright infringement. However, they are only 'guidelines' and not a guarantee that any particular use will be found to constitute copyright infringement. Only the fair use statute itself will control a given situation.

Approved

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