

Guidelines for Copyright Compliance

Ball State University

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Photocopying of Literary Works

Do's and Don't's

When deciding what to photocopy for educational use, remember the following guidelines:

Do

- Copy anything published before January 1, 1978, that does not have a copyright notice on the title page or reverse of the title page.
- Copy anything whose copyrights have expired.
- Copy anything in the public domain, that is, those works created before 1923 [1922 and back].
- Copy U.S. Government publications.
- Copy copyrighted material, if you follow the "fair use" guidelines below:
 - For scholarly research, teaching or preparation for teaching you may make a single copy of:
 1. a chapter from a book
 2. an article from a periodical or newspaper
 3. a short story, short essay or short poem
 4. a chart, diagram, graph, drawing, cartoon or picture from a book periodical, or newspaper
 - For classroom use, you may copy, without prior permission, copyrighted material *provided that* the copying meets the tests of *brevity*, *spontaneity*, and *cumulative effect* (as defined in the "[Definitions](#)" section of the BSU Guidelines for Copyright Compliance). The following conditions apply:
 1. You do not distribute the same material every semester.
 2. Each student gets only one copy and the student keeps the copy.
 3. A copyright notice appears on the first page of each copy.
 4. The students are not assessed a fee beyond the cost of photocopying.
 5. The copy is brief and does not consist of more than about 10% of the total work.
 - For library reserve use, copies may be made under the following conditions:
 1. A single copy generally follows the guidelines for classroom use, above.
 2. Multiple copies may be made if:
 - The amount of material is reasonable compared to the total amount of material assigned for the course
 - The number of copies is reasonable
 - The material contains a notice of copyright
 - The copying will not affect the market for the work

Additional information on fair use can be found here:

<http://www.bsu.edu/library/collections/copyright/4fairuse/>

Don't

- Do not copy, *without permission*, under the following conditions:
 - If the copying is "repetitive," i.e. the same materials in multiple courses or over successive semesters
 - For profit, by charging students for more than the cost of the photocopying
 - Consumable works, such as standardized tests, exercises and workbooks
 - To create anthologies as basic text material for a course
 - Textbooks or works which have not been published.

Computer Software Copying

Do's and Don't's

When deciding what software can be copied, remember the following guidelines:

Do

- Read the software license first.
- Copy as an essential step in the utilization of the computer software.
- Copy for archive purposes provided that the archived copy is destroyed in the event that continued possession of the computer program should cease to be rightful.
- Copy evaluation/demonstration software with the written consent of the rightful owner.
- Compensate the copyright license owner for shareware when required.
- Copy public domain software.

Don't

- Copy for purposes of resale.
- You may sell your original purchased copy with all archival and backup copies and documentation, thereby relinquishing your right to use the software.
- Copy for sharing.
- The copyright law does not permit the use--on more than one computer--of a duplicate copy of single licensed software, unless the license permits simultaneous installation on office computers and home or portable computers.
- Copy a network version of software except for purposes of archiving.
- The network administrator is responsible for making archive copies.

Copying of Musical Works, Including Lyrics

Do's and Don't's

When deciding what to copy for educational use, remember the following guidelines:

Do

- Copy to replace unavailable purchased copies for an imminent performance, provided that
 - Purchased copies are substituted in due course.
- Copy excerpts of works which are in print if the copies are to be used for academic purposes (other than performance), under the following conditions:
 - The copied portion of the work must not exceed 10 percent of the whole work.
 - The number of copies must not exceed one per student.
 - The excerpted portion must not constitute a performable unit.
- Copy an entire performable unit of a work which is no longer in print, if the copy is to be used for scholarly research or class preparation.
 - The work must be confirmed as being out of print by the copyright proprietor.
- Copy to edit or simplify, provided that
 - The fundamental character of the work is not changed.
 - Lyrics are not added or changed if they are part of the work.

Don't

- Copy to create, replace or substitute for anthologies.
- Copy to create "consumable" material such as workbooks or tests.
- Copy for performance for reasons other than those stated above.
- Copy without including the copyright notice which appears on the printed copy.

Additional music copying guidelines are available at the Music Library Association website:

www.musiclibraryassoc.org

It is the responsibility of University Copyright Center in Bracken Library to assist you with your musical copying needs as well as assisting you with obtaining permission for materials for use in your face-to-face and distance education classes. Please contact:

- Dr. Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

Making Sound Recordings

Do's and Don't's

When deciding what sound recordings to copy for educational use, remember the following guidelines:

Do

- Copy portions of sound recordings for purposes of evaluation, instruction, scholarship or research, provided that
 - The use of the copy is limited to nonprofit educational purposes.
 - Not over 10% of a recording is used, thereby ensuring the use of the copy will not have negative impact on the marketability of the work.
 - Copy portions of a single sound recording of a work owned by the University for aural exercises or examinations.
 - Make a single sound recording of student performances for evaluation or rehearsal purposes.
 - Make a fair use analysis for other uses of copyrighted music.
 - Make use of the CONFU Multimedia Guidelines for other, limited uses of copyrighted music.

Don't

- Distribute purchased, copyrighted sound recordings for commercial advantage unless they are original pressings or licensed copies and you own the sound recordings, either by purchase or transfer of ownership. In such case, you may sell or otherwise dispose of the original.
- Share music files [via P2P, etc.] without permission of the copyright owner.
- Misuse the fair use of sound recordings

For licensing of music including making multiple copies, obtaining mechanical rights, and digital licensing outside of the uses as described in the BSU Copyright Compliance Document, contact the Harry Fox Agency:

www.harryfox.com

It is the responsibility of University Copyright Center in Bracken Library to assist you with your sound recording needs as well as assisting you with obtaining permission for materials for use in your face-to-face and distance education classes. Please contact:

- Dr. Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

Recording Off-Air Videotapes

Do's and Don't's

When deciding what to videotape for educational use, remember the following Do's and Don'ts based upon the Kastenmeier Guidelines:

Do

- Request University Media Services to videotape, for instructional purposes, a program which is being broadcast to the general public under the following conditions:
 - Retention of the videotape must not exceed the first 10 class days plus the following 35 calendar days.
 - Use must be limited to two times per individual teacher during the first 10 school days of the retention period--once for instruction and once for instructional reinforcement.
 - Use beyond the first 10 school days is confined to teacher evaluation purposes.
- Request that a limited number of copies of the off-air recording are made to meet the legitimate needs of other teachers, if additional copies are needed.
- Videotape, at a teachers request, a program which is being broadcast to the general public, provided that
 - The program is recorded off-air only one time at the request of the same teacher.
 - The program is not videotaped in anticipation of requests.

Don't

- Alter the original content of a videotaped broadcast program.
- Combine or merge videotaped broadcast programs to create teaching anthologies or compilations.
- Make videotapes of broadcast programs without including the copyright notice on the broadcast program as recorded.

Additional information on the Kastenmeier Guidelines can be found here:

www.lib.berkeley.edu/MRC/Kastenmeier.html

It is the responsibility of University Copyright Center in Bracken Library to assist you with your off-air recording needs as well as assisting you with obtaining permission for materials for use in your face-to-face and distance education classes. Please contact:

- Dr. Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

Use of Copyrighted Material on the Video Information System (VIS)

Do's and Don't's

When deciding what to use of copyrighted material on the Video Information System:

Do

- Use over VIS, in whole or in part, any commercially produced or copyrighted videotape, film, slide, or other visual image owned by the University or obtained through interlibrary loan.
- Use over VIS, in whole or in part, any legally obtained off-air recording, provided that such viewing takes place within the prescribed 10 class-day evaluation period.
- Copy and use over VIS anything published before January 1, 1978, that does not have a copyright notice.
- Copy and use over VIS anything whose copyright has expired, provided that the copyright has not been renewed.
- Copy and use over VIS U.S. Government publications or video productions, with the exception of some National Technical Information Service publications less than five years old.
- Copy and use over VIS any chart, diagram, graph, drawing, cartoon, or picture from a book, magazine, newspaper, or other publication, provided that you do not copy the very essence of the work, regardless of its length or size; that copyright ownership is acknowledged either verbally or visually during the presentation; and that other fair use guidelines are upheld.
- Use and maintain recorded images until they no longer serve your academic/teaching purpose at Ball State University, at which time they will be erased.
- Copy and use over VIS any computer software screen images, provided that you are using a legal copy of the software.
- Use copyrighted (ASCAP, SEASAC or BMI) musical works, including lyrics, as background music for video presentations used over VIS provided that the presentation is for academic (not entertainment) purposes, that the University owns a copy of the original musical work, and that the presentation is for classroom use.

Don't

- Copy, dub, or repurpose commercially produced and/or copyrighted videotapes, films, software or slides, in whole or in part, without copyright clearance or permission.
- Edit or excerpt clips from broadcast (off-air) recordings (including commercial advertisements) without copyright clearance or permission. Clips may be cued and shown from any legally obtained off-air recording provided that such viewing takes place within the prescribed 10 class-day evaluation period.
- Alter the original content of a videotaped off-air recording.
- Combine or merge videotaped broadcast programs to create teaching anthologies or compilations without copyright clearance for each program.

It is the responsibility of University Copyright Center in Bracken Library to assist you with your VIS needs as well as assisting you with obtaining permission for materials for use in your face-to-face and distance education classes. Please contact:

- Dr. Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

Use of Copyrighted Material in Distance Education General Considerations

Do's and Don't's

When deciding in how to legally use copyrighted material in Distance Education, the following general principles apply. Please note that these provisions are generally for non-dramatic presentations, not performances.

Do

- Use the University Copyright Center [UCC] to obtain copyright permission for class visuals during the design phase of your course.
- Provide appropriate Teleplex personnel with copyright clearance authorization during the design/production phase of course development. Alternately, the UCC can be used to confirm transmission permission.
- Contact the UCC and renew copyright permission each time the course is taught.
- Request off-air taping of television programs through the Teleplex.
- Preview recently and legally taped programs in a timely manner. There are 10 class days to use television programs in class and an additional 35 calendar days to preview these tapes for purchase. For additional information about the Kastenmeier Off-air Taping Guidelines, please review 1.5, Recording Off-air Videotapes.
- Present students, in all distance education classes, with copyright rules (to assist them with copyright guidelines in their own on-air student presentations.)
- Use music/audio materials in class if most of the following conditions have been met:
 - The music is registered under BMI, ASCAP or SEASAC.
 - BSU owns the original work.
 - The music is not for sale or resale.
 - The music being used is for academic purposes only.
 - The Material is royalty-free.
 - Demonstrate to appropriate Teleplex personnel proof of ownership of any computer software to be used on Distance Learning Classroom computers.

Don't

- Transfer programs from one format to another. For example, transferring a VHS tape or VHS images onto a DVD, digital tape, etc.)
- Edit copyrighted material.
- Apply the concept of spontaneity to the use of visuals on IHETS, unless they are of a "timely" nature. Existing visuals should be copyright-cleared for use in the design process.
- Copy more than one visual from a book, periodical or other print source [unless a very strong Fair Use analysis can be made and then can be met.]
- Visually record or dramatically interpret literary works as part of class instruction. You may orally read a literary work to a class but not dramatically interpret it, that is, perform it.
- Copy television programs (off-air) at home for use in the IHETS classroom [unless Teleplex cannot be contacted in a timely manner to record the program.

It is the responsibility of University Copyright Center in Bracken Library to assist you with your distance education needs as well as assisting you with obtaining permission for materials for use in your face-to-face and distance education classes. Please contact:

- Dr. Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

A Selective List of Copyright Do's and Don't's for Distance Education

Copyright & Electronic Resources
University Libraries
Ball State University
Dr. F. J. Dolak
Winter 2001

| Format, Genre or Form of Art Work | Do's | Don't's |
|--|--|--|
| Ballet. | | Do not perform or dance without permission. |
| Books. | Do use text, a chart, a graph, a map or a picture. Do digitize text, a chart, a graph, a map or a picture. | |
| CD-Is or CD-ROMs. | Do use a still frame. | Do not use audio or a visual sequence without permission. |
| Choreographed works. | | Do not perform or dance without permission. |
| Dramatic works. | | Do not read or act out a dramatic work without permission. |
| DVDs. | Do use a still frame. | Do not use audio or a visual sequence without permission. |
| Filmstrips. | Do use a frame. | Do not use audio or sequential, consecutive images without permission. |
| Laserdiscs. | Do use a still frame. | Do not use audio or a visual sequence without permission. |
| Motion pictures. | Do use a still frame. | Do not use audio or a visual sequence without permission. |
| Music that is dramatic. | | Do not use audio without permission. |
| Music that is pre-recorded and non-dramatic. | Do use portions of audio. | |
| Music that is unlicensed. | | Do not sing or play without permission |
| Newspapers that are Current. | Do make a transparency and read portions of text. | |
| Poems. | Do read portions of text. | |
| Serials that are Current. | Do make a transparency and read portions of text. | |
| Slide Sets. | Do use a slide. | Do not use sequential, consecutive images without permission. |
| Software programs. | Do use a screen, self-generated screens, self-generated animation, clip art or presentations graphics. | Do not use commercial animation without permission. |
| Transparency sets. | Do use a transparency. | Do not use audio or sequential, consecutive images without permission. |
| VHS videocassette tapes. | Do use a still frame. | Do not use audio or a visual sequence without permission. |

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your distance education needs as well as assisting you with obtaining permission for materials for use in your classes. Please contact us:

- **E-mail:** kferguso@wp.bsu.edu
- **Phone:** 765-285-5444
- **Fax:** 765-285-2644

- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

Copying of Dramatic Works

Do's and Don't's

When deciding what to copy for educational use, remember the following guidelines:

Do

- Copy to temporarily replace unavailable purchased copies for an imminent performance.
 - Purchased copies must be substituted in due course.
- Copy an entire performable unit of work which is no longer in print provided that
 - The copy is to be used for scholarly research.
 - Confirmation has been made by the copyright proprietor that the work is out of print.
- Copy to edit or simplify, if the fundamental character of the work is unchanged.

Don't

- Copy to create, replace or substitute for anthologies.
- Copy to create "consumable" material such as workbooks or tests.
- Copy for performance for reasons other than those stated above.
- Copy for purchase avoidance.
- Copy without including the copyright notice which appears on the printed copy.

Copyright Clearance Requests
Educational Resources Public Services, Bracken Library
Do's and Don't's

When deciding what to use for copyright clearance requests:

Do

- Contact the Copyright Clearance Coordinator, Educational Resources University Libraries, Room L-L023, telephone 285-5444 when items proposed for duplication, a format transfer or change (for example, transfer of 16mm to 1/2" VHS, transfer of a still picture to laser disc, etc.), a closed circuit TV or broadcast transmission, or the purchase of non-broadcast educational reproduction rights involve copyrighted materials.
- Plan ahead. Requests may be submitted one semester or more in advance of use date. Some clearances may require months to obtain.
- Complete a copyright clearance form and include all appropriate information. These forms are available from the Copyright Clearance Coordinator.
- Submit each requested item on a separate clearance form. Copyright clearances are obtained per item -- not per book. Each photo, page, or graph proposed for use from one book must be submitted on a separate form.
- Inform the Copyright Clearance Coordinator if the material is not owned by the Library. Explain how or from whom the material will be obtained. If the material is being requested for purchase by the Library, a separate purchase request form must be completed for the Head of Educational Resources, 285-5333.
- Realize that a copyright clearance must be obtained for any copyrighted material which is broadcast, transmitted over closed circuit TV, has a format change, or is copied. This includes films, videos, laser disks, audiocassettes, sound recordings, computer software, slides, filmstrips, maps, periodicals, books, photographs, artwork, advertisement materials and publications.
- Realize that there is a difference between broadcast rights and closed circuit television rights. Additionally, the purchase of non-broadcast educational reproduction rights might be required if the material will be edited.

Don't

- Assume that material cleared for closed circuit or broadcast use is automatically cleared for future use as well.
- Contact a copyright holder and make your own arrangements or ask for fees to be invoiced to the Copyright Clearance Coordinator.

Copyright Clearance Requests
Course Packets - Pittenger Student Center
Do's and Don't's

When needing to provide students with course packets:

Do

- Contact the Ball State Bookstore Custom Publishing Service in Pittenger Student Center, telephone 285-8080 when anthologies, professor-authored works, lab manuals, or syllabi are needed.
- Provide information requested for each copyrighted work as indicated on the form supplied by the service.
- Sign indemnification agreement which acknowledges responsibility for data provided to the service.
- Deliver materials to Bookstore four to six weeks prior to time needed to allow for copyright permissions to be processed by the service.
- Allow two to three days for printing time for the original run. Allow one day for re-runs.

Don't

- Ask the service to reproduce items under Fair Use guidelines, i.e., without receiving permissions to duplicate.

GENERAL INFORMATION

2.0 COPYRIGHT PROTECTION

2.1 *Definition*

Copyright is a form of protection the law provides to the authors of "original works of authorship" for their intellectual works, both published and unpublished. Although the [rights provided by the law](#) to the owners of the copyright are not unlimited in scope, it is illegal to violate any of these rights.

Copyright is a constitutionally conceived property right which is designed to promote the progress of science and the useful arts by securing for an author the benefits of his or her original work of authorship for a limited time (U.S. Constitution, Art. I, Sec. 8.) The Copyright statute, 17 U.S.C. § 101 *et seq.* (effective date: 1978), implements this policy by balancing the author's interest against the public interest in the dissemination of information affecting areas of universal concern, such as art, science, history and business. The grand design of this delicate balance is to foster the creation and dissemination of intellectual works for the general public.

GENERAL INFORMATION

2.0 COPYRIGHT PROTECTION

2.2 Scope of Copyright Protection

Copyright protection exists in original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced or communicated, either directly or indirectly by the aid of a machine or device. Works of authorship include literary works (books and printed material including photographs); computer software; musical works, including lyrics; visual works (motion pictures, laserdiscs, videotapes, etc.); sound recordings; and dramatic works (plays).

Statutory copyright protection includes only works that have been fixed in a tangible form of expression. It does not extend to titles, names, short phrases and slogans; works consisting entirely of information that is common property; and ideas, procedures, methods, concepts, principles, discoveries, systems, devices, processes, and the like. The Copyright Act defines the rights of a copyright holder and how those rights may be enforced against an infringer.

[Additional information.](#)

GENERAL INFORMATION

2.0 COPYRIGHT PROTECTION

2.3 General Exclusions: Fair Use

Included within the Copyright Act is the "fair use" doctrine which allows, under certain conditions, the copying of copyrighted material without seeking the permission of the copyright holder. While the Copyright Act lists general factors under the heading of "fair use," it provides little in the way of specific directions for what constitutes fair use. The law states:

17 U.S.C. § 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
4. the effect of the use upon the potential market for or value of the copyrighted work. (Emphasis added.)

Notwithstanding the above, fair use copying is limited, but allowed under prescribed conditions for nonprofit libraries and educational institutions.

Fair use more currently has been defined as the "privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner...." [Rosemont Enterprises, Inc. v. Random House, Inc., 366 F.2d 303, 306 (2d Cir.1966)]. Additionally, "There are no absolute rules as to how much of a copyrighted work may be copied and still be considered a fair use." [Maxtone-Grapham v. Burtchaell, 803 F.2d 1253 (2d Cir.)]. Furthermore, classroom and library copying are viewed more sympathetically "since they generally involve no commercial exploitation and ... [T]his is not true of photocopy shops, which reproduce for profit." [Nimmer, § 13.05[E], at 13-93--13-94, & n.69.]

[Additional fair use information.](#)

GENERAL INFORMATION

2.0 COPYRIGHT PROTECTION

2.4 Infringement

Courts and legal scholars alike have commented that the fair use provisions in the Copyright Act are among the most vague and difficult that can be found anywhere in the law. In amending the Copyright Act in 1976, Congress anticipated the problem this ambiguity would pose for users of copyrighted materials who wished to stay under the umbrella of protection offered by fair use. For this reason, the Copyright Act contains specific provisions which grant additional rights to libraries and insulate employees of a non-profit educational institution, library or archives from statutory damages for infringement where the infringer believed or had reasonable ground to believe the photocopying was a fair use of the material, 17 U.S.C. § 504(c)(2)

Normally, an infringer is liable to the copyright owner for the actual losses sustained because of the photocopying and any additional profits of the infringer, 17 U.S.C. § 504(a)(1) and (b). Where the monetary losses are nominal, the copyright owner usually will claim statutory damages instead of the actual losses, 17 U.S.C. § 504(a)(2) and (c). The statutory damages may reach as high as \$10,000 (or up to \$50,000 if the infringement is willful). In addition to suing for money damages, a copyright owner can usually prevent future infringement through a court injunction, 17 U.S.C. § 502.

The Copyright Act specifically exempts from statutory damages any employee of a non-profit educational institution, library or archives, who "believed and had reasonable grounds for believing" that his or her use of the copyrighted work was a fair use under Section 107. 17 U.S.C. § 504(c)(2). While the fair use provisions are admittedly ambiguous, any employee who attempts to stay within the guidelines of this policy should have an adequate good faith defense in the case of an innocently committed infringement. Likewise, there should be no adverse affect on the market for the copyrighted works used.

USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.1 *Permissible Photocopying of Copyrighted Published Works*

The Copyright Act allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a fair use of the material, 17 U.S.C. § 107. These guidelines discuss the boundaries for fair use of photocopied material used in research, for the classroom or in Library Reserve. Fair use cannot always be expressed in numbers, such as the number of pages copied or the number of copies distributed. Therefore, you should weigh the various factors listed in the Act and judge whether the intended use of photocopied, copyrighted material is within the spirit of the fair use doctrine.

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your copyright questions and needs. Please contact us:

- Kim Ferguson
- **E-mail:** kferguso@wp.bsu.edu
- **Phone:** 765-285-5444
- **Fax:** 765-285-2644

- Fritz Dolak
- **E-mail:** fdolak@wp.bsu.edu
- **Phone:** 765-285-5330
- **Fax:** 765-285-2644

USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.1 *Permissible Photocopying of Copyrighted Published Works*

3.1.1 Research Uses: Instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing 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, diagram, graph, drawing, cartoon or picture from a book, periodical or newspaper;
- e. liner notes or libretti from a sound recording.

These examples reflect the most conservative guidelines for fair use. They do not represent inviolate ceilings for the amount of copyrighted material which can be photocopied within the boundaries of fair use. When exceeding these minimum levels, however, you again should consider the four factors listed above in Section 1.3 to make sure that any additional photocopying is justified. The following demonstrate situations where increased levels of photocopying would continue to remain within the scope of fair use.

- a. the inability to obtain another copy of the work because it is not available from another library or source or cannot be obtained within your time constraints;
- b. the intention to photocopy the material only once and not to distribute the material to others;
- c. the ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater amount of material which may be photocopied).

Most single-copy photocopying for your personal use in research--even when it involves a substantial portion of a work--may well constitute fair use.

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your copyright questions and needs. Please contact us:

- Kim Ferguson
- **E-mail:** kferguso@wp.bsu.edu
- **Phone:** 765-285-5444
- **Fax:** 765-285-2644

- Fritz Dolak
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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.1 *Permissible Photocopying of Copyrighted Published Works*

3.1.2 Classroom Uses: Primary and secondary school educators have, with publishers, developed the following guidelines which allow a teacher to distribute photocopied material to students in a class without the publisher's prior permission under the following conditions:

- a. the distribution of the same photocopied material does not occur every semester;
- b. only one copy is distributed for each student and this copy becomes the student's property;
- c. the material includes a copyright notice on the first page of the portion of material photocopied;
- d. the students are not assessed any fee beyond the actual cost of the photocopying.

In addition, the educators agreed that the amount of material distributed should not exceed certain brevity standards. Under those guidelines, a prose work may be reproduced in its entirety if it is less than 2500 words in length. If the work exceeds such length, the excerpt reproduced may not exceed 1000 words, or 10 percent of the work, whichever is less. In the case of poetry, 250 words is the maximum permitted.

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work, 17 U.S.C. § 107(4) and *Basic Books, Inc., et al, Plaintiffs versus Kinko's Graphics Corporation, Defendant [758 F.Supp. 1522 (S.D.N.Y. 1991)]*. To guard against this effect, you usually should restrict use of an item of photocopied material to one course and you should not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.1 *Permissible Photocopying of Copyrighted Published Works*

3.1.3 Library Reserve Uses: At the request of a faculty member, the Library may place on Reserve photocopied excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face-to-face.

These guidelines apply to Library Reserve to the extent that Reserve functions as an extension of classroom readings or reflects an individual student's right to photocopy for his personal scholastic use under the doctrine of fair use. In general, librarians may photocopy materials for Reserve use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education requires, such as advance independent study and research.

If the request calls for just *one* copy of the material to be placed on Reserve, the Library may place an entire article, an entire chapter from a book, or an entire poem on Reserve. Requests for *multiple* copies on Reserve should meet the following guidelines:

- a. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level, 17 U.S.C. § 107(1) and (3);
- b. the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material, 17 U.S.C. § 107(1) and (3);
- c. the material should contain a notice of copyright, see, 17 U.S.C. § 401;
- d. the effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.) 17 U.S.C. § 107(4) and *Basic Books v. Kinko's*.

For example, a professor may place on Reserve as a supplement to the course textbook a reasonable number of copies of articles from academic journals or chapters from trade books. A reasonable number of copies will in most instances be less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students and the length of time allowed for completion of the assignment may permit more in unusual circumstances.

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material be placed on Reserve if there is insufficient time to obtain permission from the copyright owner. For example, a professor may place on Reserve several photocopies of an entire article from a recent issue of *Time* magazine or the *New York Times* in lieu of distributing a copy to each member of the class. If you are in doubt as to whether a particular instance of photocopying is fair use for Reserve, you should seek the publisher's permission. Most publishers will be cooperative and will waive any fee for such a use.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.1 *Permissible Photocopying of Copyrighted Published Works*

3.1.4 *Other Library Areas*

A number of other areas in the Library are involved with copyright considerations. For example, obligatory notices are affixed to photocopiers, each circulating computer diskette, circulating and floor-use computers, and the display of a notice of the copyright law pertaining to uses in music in the Music Listening Center. Various units in the Library--Architecture, Archives and Special Collections, Educational Resources, Interlibrary Loan, and the Music Listening Center--adhere to federal guidelines, laws, and copyright procedures pertaining to their services.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.2 *Permissible Photocopying of Other Published Works*

3.2.1 *Uncopyrighted Published Works:* Writings published before January 1, 1978, which have never been copyrighted may be photocopied without restriction. [Publishing a work without notice will not impair a copyright, but to obtain complete copyright protection the copyright notice is placed on the work when copies are publicly distributed. Using the notice helps ensure the availability of damages for infringement as well as deterring infringement.]

Copies of works protected by copyright must bear a copyright notice, which consists of the letter "c" in a circle, or the word "Copyright" or the abbreviation "Copr." plus the year of first publication and the name of the copyright owner (e.g., © 1990 John Doe), 17 U.S.C. § 401. Sound recordings have similar protection and carry the symbol "p" in a circle (e.g.,). They are discussed in 17 U.S.C. § 402.

As for books published before January 1, 1978, the notice must be placed on the title page or the reverse side of the title page. In a periodical, the notice must be placed either on the title page, the first page of text or in the masthead. Pre-1978 failure by authors to comply with the notice requirements resulted in works being injected into the public domain, i.e. unprotected.

Copyright notice requirements have been relaxed since 1978, so that the absence of notice on copies of a work published after January 1, 1978, does not necessarily mean the work is in the public domain, 17 U.S.C. § 405(a) and(c). However, you will not be liable for damages for copyright infringement of works published after that date, if, after normal inspection, you photocopy a work on which you cannot find a copyright symbol and you have not received actual notice of the fact the work is copyrighted, 17 U.S.C. § 405(b). However, a copyright owner who finds out about your photocopying would have the right to prevent further distribution of the copies if in fact the work were copyrighted and the copies are infringing, 17 U.S.C. § 405(b).

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.2 *Permissible Photocopying of Other Published Works*

3.2.2 *Published Works with Expired Copyrights:* Writings with expired copyrights may be photocopied without restriction. All copyrights prior to 1907 have expired, 17 U.S.C. § 304(b). **Copyrights granted after 1923 may have been renewed**, however, and the renewal notice may not appear. Therefore, it should be assumed all writings dated 1923 or later are covered by a valid copyright, unless information to the contrary is obtained from the owner or the U.S. Copyright Office (see Copyright office circular 15t).

Determining the status of a copyright can be accomplished in either of two ways: making formal application at Copyright Clearance Office in Bracken Library or on your own. If the latter is chosen, then U. S. Copyright Office Circular 22 [available in Government Publications in Bracken Library] explains how to investigate the copyright status of a work.

One way to do this is to use the *Catalog of Copyright Entries* published by the U. S. Copyright Office and also available in Bracken Library on microfiche. Alternatively you may request the Copyright Office to conduct a search of its registration and/or assignment records. The Copyright Office charges an hourly fee of \$20.00 an hour for this service. If you choose this approach, you will need to submit as much information as you have available concerning the work in which you are interested. Depending upon the material, this will, for example, include information such as the title, author, publisher, photographer, approximate date of publication, the type of work or any available copyright data. The Copyright Office does caution that its searches are not conclusive; for instance, if a work obtained copyright less than 28 years ago, it may be fully protected although there has been no registration or deposit.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.2 *Permissible Photocopying of Other Published Works*

3.2.3 *Unpublished Works:* Unpublished works, such as theses and dissertations, may be protected by copyright.

If such a work was created before January 1, 1978 and has not been copyrighted or published without copyright notice, the work is protected under the Copyright Act for the life of the author plus SEVENTY years, 17 U.S.C. § 303.

In no case is the expiration earlier than December 31, 2002. After 2002, copyright protection for these works is expired. If such a work is published on or before that date, the copyright will not expire before December 31, 2027.

Works created after January 1, 1978, and not published retain copyright protection for the life of the author plus SEVENTY years, 17 U.S.C. § 302.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.2 *Permissible Photocopying of Other Published Works*

3.2.4 U.S. Government Publications: All U.S. Government publications (with the possible exception of some National Technical Information Service Publications less than five years old) may be photocopied without restrictions, except to the extent they contain copyrighted materials from other sources, 17 U.S.C. § 105.

U.S. Government publications are documents prepared by an official or employee of the government in an official capacity, 17 U.S.C. § 101. Government publications include the opinions of courts in legal cases, congressional reports on proposed bills, testimony offered at congressional hearings and the work of government employees in their official capacities.

Works prepared by outside authors on contract to the government might be protected by copyright, depending on the specifics of the contract. In the absence of copyright notice on such works, it would be reasonable to assume they are government works in the public domain. It should be noted that state government works may be protected by copyright (see 17 U.S.C. § 105). However, the opinions of state courts are not protected.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.2 *Permissible Photocopying of Other Published Works*

3.3 *Photocopied Material Requiring Permission*

Copyright law applies to all forms of photocopying, whether it is undertaken at a commercial copying center, through the Ball State Bookstore, at departmental copying facilities, or at a self-service machine.

Permission is necessary when copying for the following situations:

- a. Repetitive copying. The classroom or Reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. § 107(3).
- b. Copying for profit. Faculty should not charge students more than the actual cost of photocopying the material, 17 U.S.C. § 107(1).
- c. Consumable works. The duplication of works that are consumed in the classroom, such as standardized tests, exercises and workbooks, normally requires permission from the copyright owner, 17 U.S.C. § 107(4).
- d. Creation of anthologies as basic text material for a course. Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. Such photocopying is more likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use, 17 U.S.C. § 107(4) and *Basic Books v. Kinko's*.

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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.3 *Photocopied Material Requiring Permission*

3.3.1 *Obtaining Permission for face-to-face teaching:*

Copyright clearances for teaching may be obtained from the Copyright Coordinator's office in Educational Resources in Bracken Library. Questions may be referred to Educational Resources personnel at 285-5444.

For duplicating **course packets**--anthologies of others' works, professor-authored works, lab manuals, and syllabi--the Ball State Bookstore in conjunction with an off-campus printer offer a custom publishing service for faculty. All course packets are checked for copyrighted works (including music, cartoon quotes, articles from books and periodicals, pamphlets, flyers, etc.). The bookstore will process copyright permissions, and to that end provides a form for the instructor to list each work that is copyrighted, the publication date, name of publication or periodical, page numbers, and phone or fax numbers if available. The professor is also required to sign an indemnification agreement, assuming responsibility for data provided to the bookstore.

The bookstore personnel will not reproduce copyrighted items without permissions. Therefore, packets should be delivered to the bookstore four to six weeks in advance to accommodate clearances. Questions may be addressed to the Ball State Bookstore office at 285-8080.

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your copyright questions and needs. Please contact us for further information about course packs:

- Kim Ferguson
- **E-mail:** kferguso@wp.bsu.edu
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USE OF COPYRIGHTED MATERIALS

3.0 LITERARY WORKS: BOOKS AND PRINTED MATERIAL

3.3 *Photocopied Material Requiring Permission*

3.3.2 *Obtaining Permission to copy for manuscript preparation, conference presentation, and other non-face-to-face teaching uses:* When requesting permission, the individual should communicate complete and accurate information to the copyright owner. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

- a. Title, author and/or editor, and edition of materials to be duplicated.
- b. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
- c. Number of copies to be made.
- d. Use to be made of duplicated materials.
- e. Form of distribution (classroom, newsletter, etc.).
- f. Whether or not the material is to be sold.
- g. Type of reprint (ditto, photography, offset, typeset).

The request should be sent, along with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled *The Literary Market Place* published by the R.R. Bowker Company and available in Bracken Library Reference.

The process of granting permissions requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission.

The Copyright Clearance Center (CCC), a commercial clearinghouse, also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal which is registered with the CCC and report the copying beyond fair use to the CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from the Copyright Clearance Center, 27 Congress Street, Salem, MA 01970.

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4.0 COMPUTER PROGRAMS

The growing use and importance of computer software products raises difficult questions about how property rights should be handled in a changing environment of computer software use brought about by the proliferation of microcomputers and local area networks.

Copyright law protects software against copying and distribution, even in the absence of a license agreement, unless it has been placed in public domain. Under the law of exclusive rights, **only the owner of a copyright has the right to reproduce or distribute software or its documentation.**

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4.0 COMPUTER PROGRAMS

4.1 *BSU Policy on Software Piracy (1986)*

Ball State does not condone any use of software on its time-shared systems, local network systems, or personal computer systems which is contrary to law or the license agreement applicable to the software. It is the policy of Ball State University to:

- a. *abide by all applicable copyright laws*
- b. *abide by all software license agreements signed by an authorized representative of the University.*

The following are some actions which are considered prohibited:

- a. *Providing copies of copyrighted or licensed software to others while maintaining copies for one's own use unless there is a specific provision in the license which allows such activity. This activity is forbidden even if the software is provided without cost for an educational purpose.*
- b. *Using software or documentation known to have been obtained in violation of the Copyright Law or a valid license provision.*
- c. *Using a copyrighted program on more than one machine at the same time, unless a specific license provision permits such activity.*

Violations of this policy may result in civil or criminal action against the offender and may be cause for disciplinary action under the provisions of the Student Academic Ethics Policy or the Academic Freedom and Ethics Committee.

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

The policy applies to all faculty, personnel and students of the university and includes all application and operating system software used on mainframes, mini-computers or microcomputers or any other computer devices using programmed software products.

4.2.1 Purchased Copies. Software packages or programs which, when acquired, constitute an exchange of ownership from the seller to the purchaser.

Copying for purposes of distribution whether it be for resale or for sharing is not permitted. Copying for archive purposes is permitted. Copying which is necessary to the utilization of the computer is permitted.

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

4.2.2 Lease-only Versions. Software which requires that a license fee be paid to the owner by the user. Such fee is similar to a lease payment, and ownership of the computer software or program remains with the seller of the license. **MOST COMMERCIAL SOFTWARE FALLS UNDER THIS CATEGORY.** The following situations apply:

- a. Single Copy. Using a common copy of software on more than one microcomputer is not permitted, unless the license agreement specifically states that this is permitted. Copying for purposes of distribution whether it be for resale or for sharing is not permitted. Copying to an internal hard disk for purposes of installation is permitted, as is copying for archive purposes. Some software vendors permit a copy to be made for home or portable use, provided that the two copies are not used simultaneously.
- b. Network version. Network users are not permitted to copy software used in a network environment. The network administrator may make back-up copies of the network version of the software as required by the data network's recovery policy.
- c. Site License. Copying for archive purposes is permitted at the user level. Copying with the intent to resell or share is not permitted. Ball State University controls site-licensed software by affixing a serial number to each copy of the software. One such serialized copy is permitted for use on one microcomputer. Use of a common serially numbered version on more than one microcomputer is not permitted unless the license states otherwise.

Unlike single copy software, most software under site license to the university may not reside simultaneously on home and office computers. Separate copies must be purchased. Even then, site licensed software may be loaded only on BSU-owned machines.

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

4.2.3 Evaluation or Demonstration Software. Software which is provided by the owner to the user for evaluation.

The prospective user is to use the evaluation software free of charge for a specified length of time. Ownership during this period remains with the seller of the license. **Copying evaluation or demonstration software without the written consent of the rightful owner is not permitted.**

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

4.2.4 Shareware. Unsolicited software which is passed to a prospective buyer through the mail or by another individual or by an institution.

This software is to be evaluated, without contract, by the prospective buyer and if retained by the prospective buyer, the seller relies on a "good faith" transfer of a license fee from the user to the seller of the license. Ethical behavior is expected with regard to shareware. If the software is retained or used, the requested license fee should be mailed to the rightful owner.

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

4.2.5 Public Domain Software. Non-copyrighted software which is offered for unrestricted use as public domain.

Software which is declared public domain is available for use by the public and is exempt from copyright law.

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4.0 COMPUTER PROGRAMS

4.2 Areas of Applicability

4.2.6 *Free software available over Internet.* Software downloaded from file transfer servers (ftp), for example, over Internet is protected by copyright, but the owner makes it available at no charge. Such software can be copied, used, or incorporated in new software provided that a) proper attribution is given and b) new software incorporating such software is not sold without the permission of all owners of any embedded code.

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4.0 COMPUTER PROGRAMS

4.3 *Permissible Copying*

The following quotes define the limitations on exclusive rights regarding computer programs, 17 U.S.C. § 117. It is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

- a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
- b. b. that such new copy or adaptation is for archive purposes only and that all archive copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the above provisions may be leased, sold or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale or other transfer of all rights in the program. *Adaptations* so prepared may be transferred only with the authorization of the copyright owner.

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your copyright permission requests, questions and needs. Please contact us:

- Kim Ferguson
- **E-mail:** kferguso@wp.bsu.edu
- **Phone:** 765-285-5444
- **Fax:** 765-285-2644

- Fritz Dolak
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5.0 MUSICAL WORKS (Including Lyrics)

Copying of music scores may be undertaken for legitimate educational purposes. The following guidelines state the standards of educational fair use under Section 107 of the Copyright Law.

5.1 *Permissible Photocopying of Copyrighted Works*

5.1.1 Performance: Emergency copying temporarily 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.

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5.0 MUSICAL WORKS (Including Lyrics)

Copying of music scores may be undertaken for legitimate educational purposes. The following guidelines state the standards of educational fair use under Section 107 of the Copyright Law.

5.1 *Permissible Photocopying of Copyrighted Works*

5.1.2 *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 percent of the work. The number of copies shall not exceed one copy per pupil.

A single copy of an entire performable unit (section, movement, aria, etc.) may be made solely for the purpose of scholarly research or in preparation to teach a class if the work is, a) confirmed by the copyright proprietor to be out of print or b) unavailable except in a larger work.

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5.0 MUSICAL WORKS (Including Lyrics)

5.2 *Permissible Editing of Copyrighted Works*

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.

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5.0 MUSICAL WORKS (Including Lyrics)

5.3 *Non-Permissible Photocopying*

- a. Copying to create or substitute for anthologies, compilations or collective works.
- b. Copying of works intended to be consumable in the course of study or of teaching such as workbooks, exercises, standardized tests or answer sheets.
- c. Copying for the purpose of performance, except as in 5.1.1 above.
- d. Copying for the purpose of substituting for the purchase of music, except as in 5.1.1 and 5.1.2 above.
- e. Copying without inclusion of the copyright notice which appears on the printed copy.

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6.0 SOUND RECORDINGS

A sound recording is a work which may be fixed on a physical medium such as a phonorecord. The phonorecord may be a tape, cassette tape, cartridge or disk. In this section, reference to a phonorecord will be relative to that device upon which a sound recording is fixed.

The owner of a copyright of a phonorecord has the exclusive right to distribute copies of the phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease or lending 17 U.S.C. § 106(3).

6.0 SOUND RECORDINGS

6.1 *Permissible Use*

Notwithstanding the provisions of 106(3), the fair use of the copyrighted work, including such use by reproduction in copies or phonorecords for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright. Factors to be considered in fair use are:

- a. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. Reproduction for commercial purposes is prohibited.
- b. the nature of the copyrighted work.
- c. the amount and substantiality of the portion used in relation to the work as a whole.
- d. the effect of the use upon the potential market for or value of the copyrighted work.
- e. The owner, by purchase or transfer of ownership, of a particular phonorecord obtained under section 106(3) is entitled without the authority of the copyright holder to sell or otherwise dispose of that phonorecord. The owner, however, may not dispose of directly or indirectly the phonorecord sound recording for purposes of commercial advantage by rental, lease or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational Institution, 17 U.S.C. § 109(b)(1).

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6.0 SOUND RECORDINGS

6.2 *Permissible Copying of Sound Recordings*

6.2.1 *Copying of Recorded Performances:* A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by Ball State University or the individual teacher or performer.

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6.0 SOUND RECORDINGS

6.2 *Permissible Copying of Sound Recordings*

6.2.2 *Copying for classroom use:* A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be copied from sound recordings owned by Ball State University or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by Ball State University or the individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

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7.0 VISUAL PRODUCTIONS

The following guidelines reflect a national committee's (19 organizations appointed by Congress) consensus as to the application of fair use to the recording, retention and use of off-air programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs. Ball State University's policy is to copy such programs only within these guidelines, known as the Kastenmeier Guidelines.

7.1 Off-Air Taping

Programs may be recorded off-air, off-cable, or downlinked from satellite and retained by Ball State University for a period not to exceed the first 10 class days plus the following 35 calendar days after date of recording. Upon conclusion of such retention period, all taped recordings must be erased, destroyed, or purchased.

Off-air recordings for Ball State are requested through University Media Services' Lab (telephone 285-5373) or through the Teleplex (285-1486). The off-air tapes are circulated through the Copyright Clearance Coordinator's office located in Bracken Library's Educational Resources. The following paragraphs 7.1.1 through 7.1.7 highlight the Kastenmeier Guidelines.

7.0 VISUAL PRODUCTIONS

7.1 *Off-Air Taping*

7.1.1 *Use of Recorded Broadcasts.* 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 10 consecutive school days in the retention period. "School days" are school session days--not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions within the retention period.

7.0 VISUAL PRODUCTIONS

7.1 *Off-Air Taping*

7.1.2 *Circumstances Permitting Recording.* Off-air recordings may be made only at the request of and use by individual teachers and may not be regularly recorded in anticipation of requests. No broadcast programs 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.

7.0 VISUAL PRODUCTIONS

7.1 Off-Air Taping

7.1.3 *Numbers of Copies Allowed.* A limited number of copies may be reproduced from an 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.

7.0 VISUAL PRODUCTIONS

7.1 *Off-Air Taping*

7.1.4 *Use Beyond Teaching Period.* After the first 10 consecutive school days, off-air recordings may be used up to the end of the 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.

7.0 VISUAL PRODUCTIONS

7.1 *Off-Air Taping*

7.1.5 *Editing Recordings.* 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.

7.0 VISUAL PRODUCTIONS

7.1 *Off-Air Taping*

7.1.6 *Copyright Notice.* All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

7.0 VISUAL PRODUCTIONS

7.1 Off-Air Taping

7.1.7 *Licensing Agreements.* In cases in which Ball State University enters into a formal licensing agreement with the holder of a copyright of an audio or video production, the provisions of the license shall govern the conditions of copying and use of such productions.

7.2 Use of Copyrighted Programs on VIS

The Video Information System at Ball State University is an extension of face-to-face teaching and is subject to the same guidelines. Refer to the VIS "Do's and Don't's" for specifics.

7.3 Use of Copyrighted Programs on IHETS

Permission from the copyright holder is needed in most cases before using copyrighted materials for courses taught over the Indiana Higher Education Telecommunications System. IHETS courses are transmitted educational broadcasts, which medium does not afford all the exceptions to copyright law provided for face-to-face teaching. For example, while a person is free to read a literary or musical work in an educational broadcast without infringing a copyright, the same passage may not be acted out or sung in a dramatic fashion without securing the permission of the copyright owner. Instructors preparing IHETS courses need to be guided by their instructional designer from University Media Services in processing copyright clearances. Refer to the Distance Education "Do's and Don't's" for more information.

8.0 DRAMATIC WORKS

8.1 *Permissible Use*

Copying of dramatic works or plays may be undertaken for legitimate educational purposes which follow guidelines for educational fair use under Section 107 of the Copyright Law.

8.0 DRAMATIC WORKS

8.1 *Permissible Use*

8.1.1 Performance. Emergency copying to temporarily replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course and photocopies destroyed.

8.0 DRAMATIC WORKS

8.1 *Permissible Use*

8.1.2 *Academic purposes.* A single copy of an entire performable unit (scene, act, etc.) that is a) confirmed by the copyright proprietor to be out of print or b) 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.

8.0 DRAMATIC WORKS

8.2 *Non-permissible Use*

- a. Copying to create, 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 teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
- c. Copying for the purpose of performance, except as in 8.1.1 above.
- d. Copying for the purpose of substituting for the purchase of dramatic works, except as in 8.1.1 and 8.1.2 above.
- e. Copying without inclusion of the copyright notice which appears on the printed copy.

DEFINITIONS

(Material extracted in whole or in part from The Copyright Law, Title 17 of the United States Code)

An **anonymous work** is a work on the copies or phonorecords of which no natural person is identified as author.

Audiovisual works are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if and regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

Brevity, as it relates to making multiple copies for class instructional purposes, is for:

1. Poetry - A complete poem, if less than 250 words and if printed on not more than two pages or, for a longer poem, an excerpt of not more than 250 words.
2. Prose - Either a complete article, story, or essay of less than 2,500 words, or 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 1 and 2 above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

3. Illustration - One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
4. "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 and which fall short of 2,500 words in their entirety. Paragraph 2 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% of the words found in the text thereof, may be reproduced.

Collective work is a work, such as periodical issue, anthology or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A **compilation** is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

A **computer program** is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

Copies are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed and from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

Copyright owner, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A work is **created** when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

Cumulative effect, as it relates to making multiple copies for class instructional purposes:

1. The copying of the material is for only one course in the school in which the copies are made.
2. 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.
3. There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

A **derivative work** is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation or any other form in which a work may be recast, transformed or adapted. A work consisting of editorial revisions, annotations, elaborations or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work."

A **device, machine or process** is one now known or later developed.

To **display** a work means to show a copy of it, either directly or by means of a film, slide, television image or any other device or process of in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

Dramatic works are works which include plays, pantomimes and choreography prepared for stage presentation and scripts prepared for cinema, radio and television.

A work is **fixed** in a tangible medium of expression when its embodiment in a copy or phonorecord by or under the authority of the author is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The terms **including** and **such as** are illustrative and not limitative.

A **joint work** is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

Literary works are works, other than audiovisual works, expressed in words, numbers or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks or cards, in which they are embodied.

Motion pictures are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Musical works are works which include any accompanying words and are fixed in some tangible medium of expression. Musical works include both original compositions and original arrangements.

Off-air taping includes recording from broadcast, cable, or satellite transmission.

To **perform** a work means to recite, render, play, dance or act it, either directly or by means of any device or process of 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.

Phonorecords are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. The term **phonorecords** includes the material object in which the sounds are first fixed.

Pictorial, graphic sculptural works include two-dimensional and three-dimensional works of fine, graphic and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic or sculptural work only if and only to the extent that, such design incorporates pictorial, graphic or sculptural features that can be identified separately from, and are capable of existing independently of the utilitarian aspects of the article.

A **pseudonymous work** is a work on the copies or phonorecords of which the author is identified under a fictitious name.

Publication is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance or public display constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work **publicly** means:

1. to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
2. to transmit or otherwise communicate a performance or display of the work to a place specified by clause or to the public by means of any device or process whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

Sound recordings are works that result from the fixation of a series of musical, spoken or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes or other phonorecords, in which they are embodied.

Spontaneity, as it relates to making multiple copies for class instructional purposes:

1. The copying is at the instance and inspiration of the individual teacher, and
2. 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.

A **transfer of copyright ownership** is an assignment, mortgage, exclusive license or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A **transmission program** is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To **transmit** a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A **useful article** is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article."

Video productions are works which include motion pictures and videotapes. "Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. "Videotape" means the reproduction of the images and sounds of a program or programs broadcast by a television broadcast station licensed by the Federal Communications Commission, regardless of the nature of the material objects, such as tapes or films, in which the reproduction is embodied.

A **work of the United States Government** is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A **work made for hire** is:

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a text, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes. An "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

Internet

[The Consortium for Educational Technology in University Systems](#)

[The Copyright Management Center at IUPUI](#)

[The Digital Future Coalition](#)

[Distance Learning Multimedia Development Regional Center](#)

[Georgia Harper's Copyright Law for Distance Learning](#)

[Georgia Harper's Crash Course in Copyright at the University of Texas](#)

[Georgia's Regents' Guide to Understanding Copyright and Educational Fair Use](#)

[The Institute of Continuing Legal Education at the University of Michigan](#)

[law.com](#) [select IP law or Tech law]

[Search The United States Copyright Law, Title 17](#)

[Stanford University Library: Copyright & Fair Use](#)

[The U.S. Copyright Office Home Page](#)

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Videotapes

Becker, Gary H. (Becker has three videotapes available on copyright. To order, write: Gary H. Becker, 164 Lake Breeze Circle, Lake Mary, FL 32746-6038; or call 407-322-0890.)

Copyright: What Are Your Rights to Copy Educational Materials?

Produced by the Office of Instructional Technology, South Carolina State Department of Education, n.d. Two 20-minute programs. Part 1: video/film and computer software. Part 2: print and music. Purchase: \$180.00 (both programs on single videocassette). Rental: \$50.00 (both programs on single videocassette).

Uses dramatic vignettes to pose 40 often-asked questions related to copyright laws. An attorney responds to each question and explains the answer. All questions and answers are available in print format. Order from Great Plains National, PO Box 80669, Lincoln, NE 68501, (800) 228-4630.

Copyright Law: What Every School, College and Public Library Should Know. Produced by the Association for Information Media and Equipment, 1986. 21 minutes. 16 mm: \$65.00; 1/2" VHS: \$15.00; 3/4" U-Matic: \$25.00. Add \$2.00 per title for shipping/handling. Includes user's guide.

Host-moderator Bill Kurtis, copyright lawyer Ivan Bender, and Congressman Robert Kastenmaier examine how the Copyright Law affects the educational and library use of video. Key points are addressed in individual sections: (1) What is Copyright?; (2) Fair Use; (3) Face to Face Teaching Exemption; (4) Off-Air Videotaping Guidelines; and (5) Situations and Questions. Order from AIME, PO Box 141, Skokie, IL 60076.

The New Copyright Law I and II. Produced by Gary Becker, 1986. Two programs. 1/2" VHS: \$20.00 each; 3/4": \$20.00 each provided buyer supplies own tape. Sold to educational institutions with unlimited duplication rights.

Provides an overview of the copyright law and permissible and restrictive activities in the use of copyrighted material. Videotape I: Covers the broad area of copyright and includes the initial discussion of off-air taping rights. Videotape II: Supplements Videotape I and covers off-air taping, rental and purchased video, and computer software. Order from Gary Becker, Seminole County Schools, 1211 Mellonville Avenue, Sanford, FL 32771.

Other

Video Copyright Seminar. Compiled by Jerome K. Miller, 1988. One audiocassette; brochures; bibliography; official documents. \$24.88.

A resource kit designed to provide a comprehensive overview of copyright law, applications, and restrictions. Order from Copyright Information Services, PO Box 1460, Friday Harbor, WA 98250.

Services/Organizations

The Licensing Center (TLC) is a clearinghouse for off-air videotaping rights and copyright information. Through TLC, media centers, school districts, consortia, and college systems can obtain licenses to tape, retain, and duplicate selected titles broadcast on commercial and public television. Free membership entitles you to a monthly guide to available titles as well as access to the Video Copyright Reference Service, a no-cost legal service that will answer your questions concerning copyright. Contact The Licensing Center, 5547 N. Ravenswood Avenue, Chicago, IL 60640, (800) 323-4222 or in Illinois call collect (312) 878-2600, ext. 332.

The Motion Picture Licensing Corporation (MPLC) offers a "blanket licensing" program to schools, libraries, hospitals, and other institutions wishing to use home videocassettes of feature films for public performance purposes. For a negotiated annual fee, institutions can publicly exhibit videocassette titles from MPLC-represented motion picture studios. The only stipulation is that the films cannot be used for commercial purposes. Contact MPLC, Box 3838, 2777 Summer Street, Stamford, CT 06905, (800) 338-3870 or (203) 353-1600.

PBS VIDEO is the audiovisual distribution department of the Public Broadcasting Service (PBS). Through PBS Video, media centers, school districts, consortia, and college systems can obtain licenses to tape, retain, and duplicate selected titles broadcast on public television. For further information contact PBS Video, 1320 Braddock Place, Alexandria, VA 22314 or (800) 424-7963.

Section 110(2) of the Copyright Act is very specific about what types of materials can and cannot be transmitted in distance education courses. This section of the Copyright Act makes a distinction between a **Display** and a **Performance**. In the language of the Copyright Act, **Display** means:

. . . to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

On the other hand, a **Performance** is restricted by the Copyright Act and a performance is an infringement of copyright unless permission from the copyright holder has been obtained for the performance. In the language of the Copyright Act, **Performance** 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.

Performances require permission from the rights holder(s). ***Please note that images that are shown sequentially -- regardless of format -- are considered to be a Performance.***

The chart that follows conveniently illustrates what you can use and what you cannot use [unless you have permission] in your IHETS or the public access Channel 5 distance education classes. We hope this list of *Do's and Don't's* will assist you to differentiate between Displays and Performances as defined for transmissions in the Copyright Act.

It is the responsibility of Copyright & Electronic Resources Personnel in the library to assist you with your distance education needs as well as assisting you with obtaining permission for materials for use in your classes. Please contact us:

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