

EDINBORO UNIVERSITY OF PENNSYLVANIA

## **EDUCATIONAL FAIR USE OF COPYING COPYRIGHTED MATERIALS- Policy No. C013**

Supersedes Policy No. C013, Dated 4-28-89

Recommended for Approval By John F. Fleischauer, Provost and Vice President for Academic Affairs

Approved By Foster F. Diebold, President on August 31, 1993

Review Date: As Required

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### **INTENT**

It is the intent of this policy to clarify the responsibilities of faculty and others in observing standards for the educational fair use of copyrighted materials. Copyright is a constitutionally conceived property right which is designed to promote the progress of science and art by securing for the author of informative and/or creative works the benefits of his or her original work for a specific period of time.

### **POLICY**

It is the policy of Edinboro University to adhere to the 1976 "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions With Respect to Books and Periodicals"\* and "Guidelines For Educational Uses of Music" and to adhere to copyright rules for broadcast and video materials, software, and all other materials protected by copyright law. If a faculty or staff member exceeds the following outlined procedure, without proper written authorization, he/she may be personally liable in the result of a claim of copyright infringement. This is not a definitive statement on the issues, nor should it be taken as legal advice. Despite references to federal law, and while an obvious attempt has been made to conform these guidelines to law, conformance to these guidelines only establishes evidence that a member of the University community was acting in conformance with University policy, in good faith. Nothing in this policy is to be taken to create a cause of action by any party against the University or any University employee. Nothing in this policy is to be taken as a waiver of any defense that the University or any employee may have to an action brought by a third party alleging a violation of any any law or rule.

\* As reprinted in Title 17 United States Code Annotated 107, and in Copyright Office, Library of Congress. (1991). Reproduction of copyrighted works by educators and librarians (Circular 21). Washington, DC.

## General University Guidelines

Section 107 of the copyright law, "Limitations on exclusive rights: Fair use", consists of guidelines and explanations regarding the reproduction of copyrighted works that may not be considered an infringement on the rights of copyright owners.

The following factors are considered in determining fair use:

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.

The following restrictions are stated as prohibitions in the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions". This statement is printed in Circular 21 (see attached) and in United States Code Annotated: Title 17 Copyrights (1977). St. Paul: West Publishing Co.

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable materials.

C. Copying shall not:

- a. substitute for the purchase of books, publishers' reprints or periodicals;
- b. be directed by higher authority;
- c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

## **PROCEDURE**

### 1. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

## 2. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use of discussion, provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below, and,
- B. Meets the cumulative effect test as defined below, and,
- C. Each copy includes a notice of copyright.

Definitions:

### Brevity:

A. Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) from a longer poem, an excerpt of not more than 250 words.

B. Prose: (1) Either a complete article, story or essay of less than 2500 words, or (2) an excerpt from any prose work of not more than 1000 words or 10% of the work, whatever is less, but in any event, a minimum of 500 words. (Each of the numerical limits stated in "A" and "B" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

C. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

D. "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 fall short of 2500 words in their entirety. Paragraph "B" 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.

### Spontaneity:

- A. The copying is at the instance and inspiration of the individual teacher, and
- B. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

### Cumulative Effect:

- A. The copying of the material is for only one course in the school in which the copies are made.
- B. Not more than one short poem, article, story, essay or two excerpt may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- C. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in "B" and "C" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

### 3. Copyrighted Music Material (including sound recordings and printed music)

#### Permissible Uses:

- A. Emergency copying is permissible to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
- B. For academic purposes other than performance, 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% of the whole work. The number of copies shall not exceed one copy per pupil.
- C. 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.
- D. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- E. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the

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

#### 4. Theses and Dissertations

Any thesis or dissertation may be copied, provided that it does not bear a notice of copyright. If it bears a copyright, it may be photocopied from a hard copy only after the author's permission is procured. Theses and dissertations that have been published by University Microfilms International are subject to the same copyright regulations as books and periodicals.

#### 5. Unpublished Works

All unpublished works and works of art are under protection of copyright from the moment they are created. Accordingly, all unpublished works are subject to the same copyright regulations as books and periodicals.

#### 6. Library Reproduction and Archival Function

The library may reproduce library materials when there is no intent of commercial advantage, when the material is available to the public, and when the reproductions include a notice of copyright.

Various titles owned by the University may be copied by the library in order to guarantee their security and preservation. The original will be replaced in an archive as a master, and one copy will be placed in circulation.

Single copies of copyrighted works may be made to acquire an out-of-print title that cannot be obtained through normal channels.

#### 7. Interlibrary Loans

Copying for interlibrary loan purpose is not done "in such aggregate quantities as to substitute for a subscription to or purchase of such work."

- A. The interlibrary loan department may not submit more than five requests for photocopies of articles from a particular periodical title if those requests are from issues published within the last five years. No restrictions are placed on the number of photocopies of articles requested for materials exceeding five years.
- B. No more than five requests for copies of excerpts of any given work may be made during a calendar year (January 1 to December 31).
- C. The library must state that its requests comply with the Copyright Act and must retain request records for a three-year period.

When copying is not permissible under the provisions of the copyright law, permission to copy copyrighted materials must be obtained before the materials may be reproduced.

All copies made by the Interlibrary Loan Department must bear the following copyright notice:

"Notice: This material may be protected by copyright law (Title 17, U.S. Code)."

This notice must be stamped on the first page of the copied item. Interlibrary loan order forms shall include an Order Warning of Copy-right. This notice must be displayed where orders are accepted for interlibrary loans.

## 8. Library Reserve Materials

- A. The library may place one photocopy of a periodical article per issue or one chapter from a book on faculty reserve.
- B. Library Reserve may shelve additional copies provided by faculty so long as the faculty member provides adequate reassurance in writing that the copies conform to the copyright laws or that written permission from the copyright holder has been obtained.
- C. Media titles may be placed on reserve if they are legal copies with appropriate markings and identification.
- D. Copies of copyrighted materials may not be retained on reserve for more than one semester for any faculty member unless the library receives assurance from the faculty member that permission to reproduce and distribute copies in this fashion has been granted by the copyright holder and that said reproduction is in accordance with all copyright laws.
- E. The following notice of copyright must be placed on all photocopied materials housed by the library: "Notice: This material may be protected by copyright law (Title 17, U.S. Code)."
- F. A display "Warning of Copyright" must be posted wherever reserve materials request forms are accepted. The notice should follow this suggestion: "Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material; the person using this equipment is liable for any infringement."
- G. "Consumable materials" may not be photocopied for, nor will they be accepted for, placement on reserve shelves.
- H. No books or materials obtained through interlibrary loan shall be placed on reserve.

## 9. Audiovisual Materials

The copying of audiovisual materials will be guided by the general principles of fair use and applications previously suggested for print materials.

Audiovisual materials are not exclusively limited for films, videos, slides, and transparencies. Pre-assembled bulletin boards, learning packets, story books with recordings, and compact discs all fall under the category of audiovisual material and are usually protected by current copyright laws.

## 10. Copyright Guidelines for Broadcast Programming

With the availability of video recording equipment, copying of television broadcast programming for the purpose of replaying an educationally relevant program in a classroom at a convenient time has become a common practice.

On October 14, 1981, the Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes, produced by the Kastenmeier Committee, were entered into the Congressional Record. While these guidelines do not have the effect of law, they are an integral part of the current copyright laws and carry a great weight in deciding issues of copyright violation. For this reason, the guidelines should be adhered to by all University employees regardless of where the recording is done.

A. An educational institution may tape a program and retain it for forty-five calendar days provided that:

1. Such recordings are used only once for teaching and repeated only once in the first ten class days following taping.
2. After ten class days, the tape is used in the classroom only for teacher evaluation; i.e., only to decide to include the program in a curriculum after receiving permission from the copyright owner.

The 10-Day Fair Use Guidelines can only be applied in the absence of the negotiation of more restrictive guidelines. Public Broadcasting Service (PBS) guidelines should be consulted to determine if the slightly different 7-Day School Re-record Rights apply to specific programming.

3. Videotapes are returned to the library to be erased or destroyed after the forty-five-day period unless a legal copy is being obtained. The names of high-quality programs should be submitted for potential purchase by the University.
4. Taping of broadcast programming is done only in response to a request from an individual teacher and not in anticipation of such a request.
5. All recordings include the copyright notice of the broadcast.
6. Additional copies reproduced to meet legitimate teaching needs are subject to all provisions governing the original. Recordings need not be copied in their entirety, but the original content may not be altered, combined, or merged into anthologies or compilations.

B. No editing will be done when copying is performed using University facilities. Advertisements and other "extras" will appear as broadcast.

C. Unscrambled signals from satellite transmissions can be received by an individual without any copyright liability for viewing the programs. In the event authorization is required, the proper procedures should be followed and fees paid. All classroom use and public performances of satellite transmissions require a license from the copyright holder. Teleconferences and other general broadcast programming intended for use by educational institutions that do not require a license agreement may be used in a public

performance.

D. In the 1984 Universal vs. Sony decision, the Supreme Court limited legal copying from television at home to personal use in order to fulfill time shifting needs; i.e., not being at home or more than one program running at the same time. This decision does not necessarily legalize the use for instruction.

### 11. Performance Exhibition/Home Use Video

Section 110 of the federal copyright law exempts classroom teachers from the public performance restrictions of "home use" video. The exemption exists in the course of face-to-face teaching activities.

Teachers in non-profit educational institutions may use videocassettes designated for "home use" as part of their instructional program. "Home use" videos are usually more popular titles retailed or rented for personal or family use through local video stores and supermarkets. This is enabled by Section 110 of the federal copyright law which exempts media utilization by classroom teachers from the public performance restrictions.

Library use is also exempt, since the library is a regular place of instruction for both classroom groups and individual students.

These "home use" videos may not be used as a part of non-classroom or enrichment programs open to the public. Public-performance-right materials need to be leased or rented.

### 12. Computer Software

Contractually protected and/or copyrighted computer software shall not be improperly copied, distributed, or used by the University's employees, students, or affiliated organizations.

The application of the fair use doctrine to computer copyrights is an unsettled area of the law at the time this policy was adopted; therefore, a distinction between academic and administrative use of software and specifications of the condition(s) for entering software license agreements has not been made. This policy also recognizes that users, too, have rights and that ultimately the ethical use of software involves a balance between the competing interests of users and vendors.

However, it is the responsibility of each member of the University community to adhere to this policy and to enforce it with regard to those he/she supervises. If any member of the community has a question regarding the propriety of using software, he/she is responsible for contacting his/her supervisor for direction. The supervisor may in turn refer the question to the Director of Computing and Communications Center for a decision on what constitutes proper use.

The Director of Computing and Communications Center is responsible for policy interpretation by providing responses to specific questions that arise regarding the



definition of proper use and the applicability of the policy. Specific questions of propriety, definition, and applicability that arise are to be submitted in writing to the Director of Computing and Communications Center. A written response will be issued in a timely manner. Copies of the decision will be forwarded to the Provost/Vice President for Academic Affairs, whose office will maintain an official file.

Any appeals are to be addressed in writing within ten working days to the Provost/Vice President for Academic Affairs, who will seek legal advice as necessary and render a decision in as timely a manner as is practicable.

Any member of the University community who is found to be inadvertently making or acquiring unauthorized copies or who is improperly using computer software will be confidentially notified of the policy and its application in the particular case and instructed to comply by his/her supervisor. This provision does not limit the University's ability to take further action in appropriate cases. In addition, failure to comply may subject the individual to criminal prosecution and/or civil suit under state and/or federal laws.

### 13. Guidelines For Seeking Permission From Copyright Holders

In the course of duplicating certain copyrighted materials for classroom purposes, it may be necessary to seek permission from the copyright holders when the duplication falls outside of the parameters of fair use.

Once the copyright holder has been determined, the following information must accompany any request for permission to duplicate copyrighted materials:

- A. Title, author, and/or editor and edition of material to be duplicated.
- B. Page numbers, chapters, amount of pages, and a photocopy of material to be duplicated.
- C. Number of copies.
- D. Use of the copies (teaching, conference, research).
- E. Whether or not the material is to be sold.
- F. Type of reproduction.

This request should be sent to the copyright holder and/or the permissions department of the publisher, accompanied by a self-addressed stamped envelope. Permission should be requested to duplicate copyrighted material well in advance of the anticipated use of the material. Once a reply is given, the response should be filed for future reference and verification.