

COPYRIGHT POLICY FOR DUPLICATING PRINT AND NON-PRINT MEDIA

From time to time, the faculty and staff of the College may use photocopied materials to supplement research and teaching. In many cases, photocopying can facilitate the College's mission; that is, the development and transmission of information. However, the photocopying of copyrighted materials is a right granted under the copyright law's doctrine of "fair use" which must not be abused. These guidelines will explain the College's policy concerning the photocopying of copyrighted materials by faculty and staff.

Copyright is a constitutionally conceived property right which is designed to promote the progress of science and the arts by securing for an author the benefits of his or her original work of authorship for a limited time. The Copyright statute 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. [17 U.S.C. #101.]

The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included within the Copyright Act is the "fair use" doctrine which allows, under certain conditions, the copying of copyrighted material. While the 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 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 purposes and character of the use, including whether such use is of a commercial nature or is for non-profit 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.)

The purpose of the following section is to provide an explanation of the College's understanding of what constitutes permissible photocopying of copyrighted material under the fair use doctrine. Where possible, common examples of research, classroom, and library reserve photocopying have been included to illustrate what we believe to be the reach and limits of fair use.

Please note that the copyright law applies to all forms of photocopying, whether it is undertaken at a commercial copying center, at the College's central or departmental copying facilities or at a self-service machine. While you are free to use the services of a commercial establishment, you should be prepared to provide documentation of permission from the publisher (if such permission is necessary under this policy). We hope these guidelines will give you an appreciation of the

factors which weigh in favor of fair use and those factors which weigh against it. This College does not condone a policy of photocopying instead of purchasing copyrighted works where such photocopying would constitute an infringement under the copyright law, but it does encourage faculty members to exercise good judgement in serving the best interests of students in an efficient manner. The College and its faculty and staff will make a conscientious effort to comply with these guidelines.

Instructions for securing permission to photocopy copyrighted works when such copying is beyond the limits of fair use appear at the end of these guidelines. It is the policy of this College that the user (faculty, staff or librarian) secure such permission whenever it is legally necessary.

UNRESTRICTED PHOTOCOPYING

Uncopyrighted Published Works

Writings published before January 1, 1978 which have never been copyrighted may be photocopied without restriction. Works protected by copyright must bear 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, plus the name of the copyright owner. [17 U.S.C. #401]. As to works published before January 1, 1978, in the case of a book, the notice must be placed on the title page or the reverse side of the title page. In the case of a periodical the notice must be placed either on the title page, the first page of text, or in the masthead. A pre-1978 failure to comply with the notice requirements resulted in the work 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 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 found 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)].

Published Works with Expired Copyrights

Writings with expired copyrights may be photocopied without restriction. All copyrights prior to 1906 have expired. [17 U.S.C. #304(b)]. Copyrights granted after 1906 may have been renewed; however the writing will probably not contain notice of the renewal. Therefore, it should be assumed all writings dated 1906 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).

Publications of the Copyright Office which explain how to investigate the copyright status of a work are available in the reserve collection of the library.

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 new Act for the life of the author plus fifty years [17 U.S.C. #303] but in no case shall the term of copyright in such a work expire before December 31, 2002.

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]. It should be noted that state government works may be protected by copyright.

PERMISSIBLE PHOTOCOPYING OF COPYRIGHTED WORKS

The Copyright Act allows anyone to photocopy 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 suggest the boundaries for fair use of photocopied material used in research, the classroom or in a library reserve operation at the College.

Research Use

At the very least, instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

1. a chapter from a book;
2. an article from a periodical or newspaper;
3. a short story, short essay, or short poem, whether or not from a collective work;
4. a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

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 in Section 107 of the Copyright Act to make sure that any additional photocopying is justified. The following examples demonstrate situations where increased levels of photocopying would continue to remain within the scope of fair use:

1. 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;
2. the intention to photocopy the material only once and not to distribute the material to others;
3. the ability to keep the amount of the material photocopied within a reasonable proportion to the entire work, (the larger the work, the greater the 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.

Classroom Use

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:

1. the distribution of the same photocopied material does not occur every semester;
2. only one copy is distributed for each student which must become the student's property;
3. the material includes a copyright notice on the first page of the portion of material photocopied;
4. the students are not assessed any fee beyond the actual cost of the photocopying;

5. the amount of material distributed should not exceed certain brevity standards: 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% of the work, whichever is less; in the case of poetry, 250 words is the maximum permitted. (These standards of brevity may not be realistic in the College setting. Faculty members needing to exceed these limits for College teaching should not feel hampered by these guidelines, although they should attempt a "selective and sparing" use of photocopies of copyrighted material.)
6. the photocopying practices of an instructor should not have a detrimental impact on the market of the copyrighted work. [17 U.S.C. #107(4)]. To guard against this effect, instructors should normally restrict use of an item of photocopied material to one course and should not photocopy excerpts from one periodical or author repeatedly without permission of the copyright owner.

Library Reserve Use

At the request of a faculty member, the library may place on Reserve (either print or electronic) photocopied excerpts from copyrighted works **in its collection**, in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching discussed in 1-4 above. The College believes that these guidelines apply to library Reserve to the extent that it 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, instructors may ask the library to place photocopied materials on Closed or Electronic Reserve for the convenience of students both in preparing class assignments and in pursuing informal education activities which higher education requires, such as advanced independent study and research.

If the request calls for only **one copy** to be placed on Reserve, the photocopied item may be an entire article, or an entire chapter from a book, or an entire poem.

Requests for **multiple copies** on Reserve should meet the following guidelines:

1. 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)];
2. the number of copies should be reasonable in light 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)];
3. the material should contain a notice of copyright [see 17 U.S.C. #401];
4. 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)].

For example, a professor may place on Reserve a reasonable number of copies of articles from academic journals or chapters from trade books as a supplement to the course textbook. One copy for every fifteen students is usually sufficient.

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material not owned by the library be placed on Reserve for one-time use if the material is current and/or 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. If you are in doubt as to whether a particular instance of photocopying is fair use, you should seek the publisher's permission. Most publishers will be cooperative and will waive any fee for such a use. Materials owned by other libraries **cannot** be placed on Reserve. Please remember that the same copyright guidelines apply to both print Closed Reserve and Electronic Reserve.

USES OF PHOTOCOPIED MATERIAL REQUIRING PERMISSION

For copyrighted works from which instructors wish to make closed reserve assignments and which are not owned in its collection, the library will make every effort to purchase the material.

1. **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)].
2. **copying for profit:** Faculty should not charge students more than the actual cost of photocopying the material [17 U.S.C. #107(1)].
3. **consumable works:** The duplication of works that are consumed in the classroom, such as standardized texts, exercises, and workbooks, normally requires permission from the copyright owner [17 U.S.C. #107(4)].
4. **creation of anthologies as basic test 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)].
5. **interlibrary loan uses:** The library may obtain through interlibrary loan, in any one year period, up to five photocopied articles published in the last five years in a journal not owned by the library. Further requests for articles from the same journal require entering a subscription, payment of a fee to the Copyright Clearance Center, or permission of the copyright proprietor. The law requires the library to keep accurate records of interlibrary loan photocopy requests.

DUPLICATION OF NON-PRINT MEDIA

Guidelines for Off-Air Recording

The guidelines for off-air recording of broadcast programming for educational purposes apply only to off-air recordings by **non-profit educational institutions**. (Congressional Record, October 14, 1981, pp. E 4750-E 4752.)

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period **not to exceed the first forty-five (45) consecutive calendar days** after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
2. Off-air recording 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 the homes of students receiving formalized home instruction, **during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period**. "School days" are school session days -- not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions -- within the forty-five (45) calendar day retention period.
3. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program 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.

4. A limited number of copies may be reproduced from each 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.
5. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used by the recording institution for student exhibition or any other non-evaluation purpose without authorization.
6. 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. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
8. Education institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

PERMISSIBLE USES OF PRE-RECORDED VIDEOTAPES (HOME VIDEOTAPE RENTALS)

1. Teachers and pupils are exempt under Title 17, Section 110 (1) to perform copyrighted works in **face-to-face instruction**, with the following limitations.
 - a. The performance is part of a **systematic course of instruction** and not for entertainment, recreation, or cultural value.
 - b. Attendance at performances is limited to pupils enrolled in the course, and to their teacher(s).
 - c. The performance is given in a classroom or a similar place devoted to instruction, including libraries and gymnasiums, so long as the attendance limitation (Item B, above) is satisfied.
 - d. The performance is given from a **legitimately-made** copy, which was not sold under a license or contract restricting school performances.

PROPRIETORS' RIGHTS

The following section is quoted from "Chapter 1: Proprietors' Rights" in Using Copyrighted Videocassettes in Classrooms and Libraries by Dr. Jerome K. Miller, 1984:

Statutory copyright law was created 270 years ago to protect authors' rights. It has been revised many times since, but its purpose remains essentially unchanged. The Copyright Revision Act of 1976 implemented this purpose by giving authors substantial control over various uses of their creative works:

Sect. 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly. (1)

The first right restricts printing and other reproductions.

The second right gives proprietors control over derivative works, such as new editions or books, films based on books, and clothing displaying cartoon characters.

The third right, the "right of first publication," gives proprietors the right to keep products off the market. However, once a work legitimately enters the market--through sale, lease, or lending--the proprietors lose this right.

The fourth right enables proprietors to maintain artistic control and secure income from performances.

The fifth right has a similar effect on displays of copyrighted works.

The new law substantially revised the right to regulate performances and displays. It removed the for-profit-performance-in-public limitation in the old law and replaced it with the fourth and fifth subsections described above. Although the new law enhanced the proprietors' right to control performances and displays, the law authorized certain public performances and displays without permission or fees:

Section. 110. Limitations on exclusive rights: Exemptions of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

.....

4. performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performances, promoters, or organizers, if--
 - a. there is no direct or indirect admission charge; or
 - b. the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain...(2)

This is the legal basis for most free performances, such as storytelling in libraries and open-air performances by municipal bands. It also authorizes benefit performances at which performers and organizers contribute their services and the income after expenses is contributed to a non-profit organization.

Although, Section 110(4) authorizes a broad range of users' rights, it imposes three key limitations in: "nondramatic," literary (works)," and "musical works." Musical, dramatic, and nondramatic are not defined in the law, but they are clear enough without further comment. The restriction on performing videocassettes appears in the innocuous phrase, "literary work," as it is defined in the law:

"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, films, tapes, , or cards, in which they are embodied.(3)

The limitation is in the first eight words: "literary works are works, other than audiovisual works ..." Because of this clause, free and benefit performances are limited to nondramatic literary or musical works--and audiovisual works are specifically excluded from this category--so they are excluded from the benefits of Section 110(4). Some audiovisual works might be regarded as musical works (a novel interpretation), but that offers little encouragement, as phonograph records and audiotapes are in a separate category, called phonorecords. Should anyone doubt videocassettes are audiovisual works, that term also is defined in the copyright law:

"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 any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.(4)

It appears, then, the Copyright Revision Act of 1976 intentionally or accidentally prohibits performances of audiovisual works, except under the educational exemption, the home-use exemption, or with the proprietor's permission.

Notes

1. Copyright Act, Sect. 106.
2. Ibid., Sect. 110.
3. Ibid., Sect. 101.
4. Ibid.

REPRODUCTION AND USE OF COPYRIGHTED MUSIC

1. A teacher may make a single copy of a song, movement, or short section from a printed musical work that is unavailable except in a larger work for purposes of preparing for instruction.
2. A teacher may make multiple copies for classroom use of an excerpt of not more than 10% of a printed musical work if it is to be used for academic purposes other than performance, provided, however, that the excerpt does not comprise a part of the whole musical work which would constitute a performable unit such as a complete section, movement or song.
3. In an emergency, a teacher may make and use replacement copies of printed music for an imminent musical performance when the purchased copies have been lost, destroyed or are otherwise not available.
4. A teacher may make and retain a single recording of student performances of copyrighted material when it is made for the purposes of evaluation or rehearsal.
5. A teacher may make and retain a single copy of excerpts from recordings of copyrighted musical works for use as aural exercises or examination questions.
6. A teacher may edit or simplify purchased copies of music provided that the fundamental character of the music is not distorted. Lyrics shall not be altered or added if none exist.
7. Performance by teachers or students of copyrighted music is permitted without the authorization of the copyright owner as part of a teaching activity in a classroom or instructional setting. The purpose shall be instructional rather than for entertainment.
8. Performance of non-dramatic musical works which are copyrighted are permitted without the authorization of the copyright owner, provided however, that:
 - a. the performance is not for a commercial purpose.
 - b. none of the performers, promoters or organizers are compensated; and
 - c. admission fees are used for educational or charitable purposes only.
9. All other musical performances require permission from the copyright owner.

ELECTRONIC RESOURCES

Computer software and electronic transmissions of text or imagery are protected under the Copyright Act of 1976. Users should be aware that data on the central systems are backed up onto tape and may be subpoenaed in a court case.

Use and Ownership of Software

Unauthorized copying of software is illegal. Copyright law protects software authors and publishers, just as patent law protects inventors. Unauthorized copying of software by individuals can harm the entire academic community. If unauthorized copying proliferates on campus, the College may incur a legal liability. Respect for the intellectual work and property of others has traditionally been essential to the mission of the College. As part of the College community, Information Services values the free exchange of ideas. Just as we do not tolerate plagiarism, we do not condone the unauthorized copying of software, including programs, applications, data bases, code, and documentation. Therefore, we expect all users of the College computing facilities to subscribe to the following statement of principle (developed by the EDUCOM Software Initiative) about intellectual property and the legal and ethical use of software:

Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgement, right to privacy, and right to determine the form, manner, and terms of publication and distribution. Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments. Accordingly, every user of Kalamazoo College's computing resources is expected to avoid violations of authorial integrity, including plagiarism, all invasion of privacy, unauthorized access, and trade secret and copyright violations.

No user is allowed to store or use private copies of licensed software (except that provided by Information Services (IS)) on any Kalamazoo

College computer system unless the user provides IS with a copy of a license agreement allowing such possession.

Stolen or bootleg copies of software are not allowed on any Kalamazoo College computing system.

No user may copy, or attempt to copy, any proprietary or licenses software provided or installed by IS. This includes software on the SUN systems as well as that provided for use on faculty, staff and lab microcomputers.

No user may install ANY software on Kalamazoo College microcomputer lab machines without first having the express permission of IS staff and their assistance.

The IS staff will refuse to assist or offer support to any person who is using illegally obtained or improperly licenses software. Proof of software purchase, serial numbers or OEM numbers may be required for any re-installation of software.

All software (i.e., programs and associated documentation) developed using IS computing resources and facilities is the property of Kalamazoo College. Any exception to this policy must be arranged beforehand with the Director of Information Services.

HOW TO OBTAIN PERMISSION

When a use of photocopied material requires that you request permission, you 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:

1. Title, author and/or editor, and the edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.).
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photography, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear in the front of the material, it may be readily obtained in a publication entitled *The Literary Marketplace*, published by the R.R. Bowker Company and available in the library reference collection (call no. Ref. PN 161 .L5).

The process of granting permission 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, at the very least three weeks. In most cases, publishers are very generous in granting permission. In some instances, the publisher may assess a fee for the permission. It is not inappropriate to pass this fee on to the students who receive copies of the photocopied material.

The Copyright Clearance Center (CCC) 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 CCC and pay the set fee.

SAMPLE LETTER REQUESTING PERMISSION TO COPY

September 1, 2000

Material Permissions Department
Hypothetical Book Company
500 East Avenue
Chicago, IL 60601

Dear Sir or Madam:

I would like permission to copy the following for continued use in my classes in future semesters:

Title: Learning is Good, Second Edition

Copyright: Hypothetical Book Co., 1965, 1971

Author: Frank Jones

Material to be duplicated: Chapters 10, 11 and 14 (photocopy enclosed).

Numbers of copies: 500

Distribution: The material will be distributed to students in my classes and they will pay only the cost of photocopying.

Type of reprint: Photocopy

Use: The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,
Faculty Member

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