

8/17/06

USE OF COPYRIGHTED WORKS BY FACULTY AND STAFF - PRINT MATERIALS

The purpose of this statement is to provide guidance to faculty and staff regarding copyright law and its application to the copying of print material for academic use. The statement focuses primarily on the use of “course packs”, which have become more common in recent years, but also addresses related copyright issues as they impact classroom teaching. The statement is divided into three parts: The first contains general information about what copyright is and what it protects. The second sets forth the basic rules for determining whether permission is needed to make copies of copyrighted material for academic use, and the third provides guidance on how to obtain permission to use copyrighted material.

A tremendous amount of information on copyright law is available on the internet, and a number of universities, including Yale, University of Texas, Carnegie Mellon and Stanford, have websites, listed below, that are particularly useful in an academic setting:

ogc.yale.edu/legal_reference/course_packets.html

utsystem.edu/ogc/intellectualproperty/ADMIN2.HTM

cmu.edu/policies/documents/copyright.html

<http://fairuse.stanford.edu>

The most authoritative site is maintained by the U.S. Copyright Office at www.copyright.gov, and offers a large number of circulars and fact sheets dealing with specific topics. In addition, Robert Kasunic of the Copyright Office has posted a very useful article, “A Faculty Guide to Photocopying for Classroom Use,” at www.kasunic.com/article2.htm.

I. What is Copyright: What Does It Protect, and For How Long?

Copyright protection covers original works of authorship that are fixed in a tangible medium of expression. A work is protected from the moment it is created and does not have to contain a copyright notice to be protected. Originality in the context of copyright law means only that the work has not been copied. Copyright does not protect ideas or facts. What it protects is the original manner in which ideas or facts are expressed. Subject to certain exceptions, copyright grants to the author a number of exclusive rights, including the right to reproduce and distribute copies of the work.

A. The exclusive rights under copyright are:

- the right to reproduce the work (i.e., to make copies of it, both tangible and electronic).
- the right to distribute copies of the work (in both tangible and electronic form).
- the right to display the work publicly (including display on computer screens by electronic means).
- the right to perform the work publicly (e.g., to show a film, play a song, or read a poem, either directly to an audience or by electronic means such as broadcast or internet transmission).
- the right to prepare derivative works, such as translations, abridgments, sound recordings, editorial revisions, annotations or other forms in which a work may be recast, transformed or adapted.

The exercise of any of these exclusive rights without the permission of the copyright holder may give rise to a claim of copyright infringement, if no valid defenses exist.

B. Determining public domain status

If a work is in the public domain, there is no need to obtain permission for reproducing, distributing or adapting the work; the exclusive rights described above simply do not apply, either because of the nature of the work or because the period of protection has expired. Some large categories of works are in the public domain by definition. The three primary categories are:

Works of the U.S. Government.

Statutes, regulations and judicial opinions (federal, state or local).

Works published in the U.S. before 1923.

In addition, pre-1964 works may be in the public domain because the copyright was not properly renewed in the 28th year of their initial copyright term, and pre-1989 works may be in the public domain because they were published without the required copyright notice. The website of the University of North Carolina (<http://www.unc.edu/~uncclng/public-d.htm>) sets forth detailed information about when works pass into the public domain.

Determining whether copyright renewal and notice requirements were met is a labor-intensive, work-by-work process, however, which in the vast majority of cases is more costly and burdensome than obtaining permission. The records of the Copyright Office are not electronically searchable for works registered or renewed before 1978, and obtaining original editions to check for proper copyright notice is often difficult and uncertain. Therefore, absent specific information to the contrary, it should be assumed that all works published in 1923 or later are still subject to copyright protection.

II. Reproducing Copyrighted Materials for Classroom or Research Use

The two sections below outline the principal circumstances under which the reproduction of copyrighted materials in print form is permissible for classroom purposes.

A. Guidelines for Classroom Photocopying - Safe Harbor

The legislative history of the 1976 Copyright Act contains a set of Guidelines for Classroom Copying in Not-for-Profit Educational Institutions (“Classroom Guidelines”), that were negotiated by representatives of publishers and educational institutions to provide a pragmatic “safe harbor” for the reproduction and distribution of photocopies of printed materials in the classroom setting. The Classroom Guidelines are not part of the Copyright Act *per se*, but any faculty or staff photocopying that falls within these parameters, which are summarized below, can safely be assumed to constitute a fair use.

1. Single copies for teachers

A single copy of any of the following may be made and kept by the faculty or staff member for research or teaching purposes:

- A chapter from a book.
- An article from a periodical or newspaper.
- A short story, short essay, or short poem.
- A chart, graph, diagram, drawing or picture from a print publication.

2. Multiple copies for classroom use

Photocopies may be made by or for the teacher and distributed to students if *all* of the following conditions are met:

- a. No more than one copy per student.
- b. Copyright notice appears on the first page.

c. The copied material is only a small portion of the source work, i.e.,

- Complete poems may not exceed 250 words.
- Excerpts from longer poems may not exceed 250 words.
- Complete prose articles may not exceed 2500 words.
- Excerpts of larger prose works may not exceed 1000 words or 10% of the source work.
- No more than one chart, illustration or other graphic work may be used from any one book or periodical issue.

d. The copying is spontaneous, meaning:

- It is done at the instance of the individual faculty member; and
- The decision to use the work is not made far enough in advance to expect a timely reply to a request for permission.

e. The copying is for only a single course.

f. The copying is not cumulatively significant, e.g., only one poem, article or essay (or two excerpts) can be copied from the same author, or from the same anthology, during the same term; no more than three excerpts from the same periodical issue during one term; no more than nine instances of multiple copying for a given course during one term.

g. The same material is not repeatedly copied; thus, if material is copied in one term, it may not be copied again in subsequent terms.

h. Workbooks, test booklets, etc., that are “consumed” by students may not be copied at all.

i. Overall, the copying may not serve as a replacement or substitute for anthologies, books or periodicals.

g. No charges can be imposed on students other than the actual cost of making the copies.

B. Fair Use

If faculty or staff copying exceeds the Classroom Guidelines, it may still be permissible as a fair use under § 107 of the Copyright Act. Fair use is a complex, case-by-case legal doctrine that does not provide clear rules about which uses are fair and which are not. When in doubt, you

should consult University counsel or your department chair before making or distributing photocopies in excess of the Classroom Guidelines.

The fair use provision in § 107 begins with a preamble which states that copying for “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research” is generally to be favored. This does not mean, however, that every use falling into one of those categories is automatically a fair use. To determine whether a particular use is “fair,” the Copyright Act states that four factors must always be considered:

Factor 1: The purpose and character of the use. A use for nonprofit educational purposes is more likely to be considered to be fair than a use of a commercial nature. However, merely falling into the “nonprofit educational” category does not mean that a use is necessarily fair, just that a fair use finding is more likely. When assessing the purpose and character of the use, it is also important to determine whether the use is for the same basic purpose as the original, *e.g.*, using an article in a journal simply to provide students with the information contained in that article, or whether it is for a fundamentally different purpose, *e.g.*, using that article as an example in a critique of a certain teaching style. When the use is for a fundamentally different purpose, such as critique or commentary, it is more likely to qualify as fair.

Factor 2: The nature of the copyrighted work. The copying of a work that is primarily factual is more likely to be considered fair than the copying of a work that is primarily creative. Also, there is less likelihood of a finding of fair use if the copied work is unpublished, rather than published.

Factor 3: The amount and substantiality of the portion used, in relation to the copied work as a whole. A taking of an entire work, or of a large portion of a work, is less likely to be fair than a taking of a small excerpt. Also, for a use to be fair, the amount of the taking must be proportionate with the purpose of the use. Where a large taking, or even the entirety of a work, must be reproduced in order to make the intended critique or commentary intelligible, such takings have been held to be fair uses. However, if the copied portion is small in relation to the whole, but is the essence of the work, this factor could weigh against a finding of fair use.

Factor 4: The effect of the use on the potential market for, or value of, the copied work. This is often the most important factor in deciding whether a use is fair. If an author loses a chance to sell or license his or her own work because the need for the work has been satisfied by a copy or excerpt, it is unlikely that the use will be considered fair. Even if the use was a single, isolated incident, market harm will be found where the

practice, if widespread, would jeopardize the copyright owner's market. Significantly, the relevant "market" here is quite broad; not just the market for selling the work in its entirety, but also any traditional, reasonable, or likely-to-develop market for licensing all or any portion of the work. Where such a market exists or is likely to exist, such as the market for buying photocopy licenses for articles in academic journals, it is generally not fair use to copy the work without "paying the customary price."

Again, it must be emphasized that fair use is extremely fact-specific and does not lend itself to generalizations. In every case, it is important to apply all four factors, and to evaluate them in light of each other and in light of the general purpose of copyright law to promote authorship and the dissemination of knowledge and culture. That said, any copying which uses a work for its original intended purpose, or which harms an actual or reasonable market for the work, is probably not a fair use, even if it occurs in the nonprofit educational context.

III. Obtaining Permission: When and How

A. Duplication of Materials for Use in Course Packs

The three principal ways to obtain permission to include copyrighted material in a course pack are through the Copyright Clearance Center's Academic Permissions Service, contacting the publisher directly, or using the copyright clearance and course pack service of the Columbia Bookstore, as described below.

1. Copyright Clearance Center Academic Permissions Service. A department, school or individual may obtain a photocopying license from the Copyright Clearance Center ("CCC"). If your department or school has a license, the titles of the books and other materials that are excerpted in the course pack must be checked against the "Academic Permissions Service" section of the CCC website, www.copyright.com. If the titles are covered by the department or school CCC license, a CCC Academic Permissions Service form must be completed, and the department or school, or you individually, should file the completed forms with the CCC. You should submit a copy of the completed form to the Columbia Printing Services, together with the material to be copied, and reproduction of the course packs can proceed.

2. Requesting Permission from the Publisher. For materials *not* covered by a CCC license, you may contact the publisher/copyright holder of the material in question to request course pack reprint permission. Columbia Print Services will undertake the photocopying if you can provide evidence of receipt of permission from the publisher. Print Services will send your request to the Columbia Bookstore for handling, if you do not have permission (see below).

3. Columbia University Bookstore - Faculty Services. If you do not have permission from the publisher, you may submit your request to the Columbia University Bookstore (www.columbiabookstore.com), which offers a copyright clearance and course pack service. (See resources listed at the end of this statement.)

B. Guidelines for Personnel Requested to Copy Material for Faculty/Staff Use

University personnel may copy print materials at the request of faculty and staff pursuant to the following guidelines:

1. Permission-free copying

No permission is needed to copy:

- U.S. government works.
- Statutes, regulations and court opinions.
- Works published in the U.S. before 1923.
- A single copy of an article or chapter for personal research or teaching use by faculty member.
- Materials falling within the Classroom Guidelines (see above).

2. Permission required

In all other cases, there must be one of the following for each item to be included within a course pack:

- a. CCC Academic Permission Service form (for titles covered by CCC, in schools or departments with CCC licenses); or
- b. Copy of permission grant letter from publisher (for titles not covered by CCC, or for all titles, where school or department does not have CCC license).

3. Prohibited copying

- a. Copying may not be used to create or substitute for anthologies, compilations or collective works, without obtaining permission.
- b. There should be no copying of “consumable” material, such as workbooks and test booklets, without obtaining permission.

c. Copying should not be used to substitute for the purchase of books or journals, without obtaining permission.

d. The same item should not be copied by the same faculty member for more than one term or semester, without obtaining permission.

C. Resources for Obtaining Permission

The following resources can provide or secure permissions where needed. The publisher of the work in question can also provide reprint permission in virtually all cases.

- Copyright Clearance Center, www.copyright.com. Offers the Academic Permissions Service, for photocopying (see above) Lead time varies, but allow a minimum of 4-6 weeks.
- Columbia University Bookstore, www.columbiabookstore.com, obtains copyright clearance and will create online or traditional print course packs. Lead time varies, but allow a minimum of 4-6 weeks.
- Outside photocopy services may offer a permission service, but must provide written documentation that they have such a service before they may be retained to do University work.