

COPYRIGHT AND FAIR USE POLICY
Union College
Schenectady, New York

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PURPOSE OF THE POLICY. Union College supports the copyright laws of the United States, and does not condone the violation of those laws. To this end the following policy has been developed. This policy is intended to serve as an in-house guide concerning the reproduction of copyrighted and copyrightable materials for educational and research use by employees of Union College, in accordance with the Copyright Law of the United States.

ACKNOWLEDGMENTS. Model policy statements from the following institutions were liberally adapted in the creation of this statement: Wellesley College, Indiana University, University of Georgia, University of Minnesota, Columbia University, University of North Carolina, and the University of Texas. We thank these institutions, among many others, for their hard work in creating meaningful copyright policies for educational institutions.

I. What is Copyright?

A. COPYRIGHT AND INTELLECTUAL PROPERTY

The U.S. Constitution grants Congress the power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." The purpose of copyright is to further knowledge for the public good by providing authors with an economic incentive to publish their works.

Copyright is a form of legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. Publication is not essential for copyright protection, nor is the well-known symbol of the encircled "c". Section 106 of the Copyright Act (90 Stat 2541) generally gives the owner of copyright the **exclusive** right to do and to authorize others to do the following:

- ▶ Reproduce copies of the work.
- ▶ Prepare derivative works based on the copyrighted work.

- ▶ Distribute copies of the work by sale, rental, lease, or lending.
- ▶ Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).
- ▶ Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work -- including the individual images of a film -- or a pantomime).

B. COPYRIGHTABLE WORKS INCLUDE AT LEAST THE FOLLOWING CATEGORIES:

- ✓ Literary works
- ✓ Musical works, including any accompanying words
- ✓ Dramatic works, including any accompanying music
- ✓ Pantomimes and choreographic works
- ✓ Pictorial, graphic, and sculptural works
- ✓ Motion pictures and other audiovisual works
- ✓ Sound recordings
- ✓ Architectural works

These categories should be viewed quite broadly: for instance, computer programs are 'literary works'; maps are 'pictorial, graphics, and sculptural works'.

C. WHO OWNS COPYRIGHT?

The copyright owner retains these rights even when the work itself belongs to someone else. However, the rights are not absolute. They are subject to both "fair use" limitations, which apply to all media, and medium-specific limitations.

D. WHAT IS "PUBLIC DOMAIN"?

A creative work, invention or logo that is available for use without permission from its owner is generally considered to be in the 'public domain'. This typically occurs after patent, trademark, or copyright protection has expired.

E. PUBLIC DOMAIN AND LENGTH OF COPYRIGHT

If a work was first published (publicly distributed) more than 75 years ago, it is safe to assume it is in the public domain. The duration of copyright for works fewer than 75 years old is as follows:

- If a work was first published before January 1, 1978, the first term of copyright endures for 28 years from the date it was originally secured;
- If a work was first published before January 1, 1978, and its copyright was renewed, the renewal term endures for 75 years from the date copyright was originally secured;

- If a work was not published or copyrighted prior to January 1, 1978, the term of the copyright is the life of the author plus 50 years, but at least until December 31, 2002. If a work was published before 2002, then the term will last until December 31, 2027;
- If a work is a United States Government publication, copyright protection is generally not available (17 U.S.C. 105). Nevertheless, a limited number of U.S. government publications may be copyrighted under special circumstances.

The following chart illustrates these rules.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term

Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

II. Fair Use

A. WHAT IS "FAIR USE"?

The doctrine of fair use, (section 107 of the Copyright Act of 1976), addresses the needs of scholars and students by mitigating the rights of copyright ownership. This law provides that certain limited use of copyrighted materials for such purposes as teaching, criticism, commentary, reporting, scholarship, and research is not an infringement of copyright.

B. FAIR USE AND THE FIRST AMENDMENT

In recognition that the unrestricted flow of information is vital to a free society, the First Amendment to the U.S. Constitution prohibits actions that could abridge freedom of speech or of the press. Because information flows in more than one direction, the First Amendment guarantees both the right to express information and the right to receive it. Copyright, too, is intended to promote the sharing of ideas, but because it employs restrictions on the expression of ideas as an economic stimulus to their dissemination, copyright may come into conflict with the greater purpose of the First Amendment. The doctrine of fair use represents an attempt to strike a balance between the requirements of the First Amendment and appropriate compensation to authors as protected by copyright. 17 U.S.C. 107 states that copyrighted materials may be reproduced under special circumstances that constitute fair use.

C. FAIR USE AND GUIDELINES

The doctrine of fair use sets forth four factors (which are really guidelines rather than explicit rules) to be considered when making a determination of fair use [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

The purpose and character of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.

The nature of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.

The amount, substantiality, or portion used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.

The effect of the use on the potential market of the copyrighted work. This factor is often regarded as the most critical one in determining fair use. In fact, even the U.S. Supreme Court has said that it is an error to consider this factor dispositive weight. Although market harm will weigh against a finding of fair use, a thoughtful fair use analysis should not use this factor as a shortcut. Especially when the use is transformative, the use of the work may be considered fair even if market harm may be present,

D. GUIDELINES FOR PHOTOCOPYING PERMITTED AS FAIR USE

In an effort to further clarify the limits of fair use, *ad hoc* committees of publishers, authors, and educational institutions have at various times prepared guidelines for classroom copying in not-for-profit educational institutions. These guidelines are generally considered to establish *minimum permissible* conduct under the fair use doctrine for unauthorized copying; however, these guidelines are *not* binding on the courts.

It is important to notice that these attempts to clarify the meaning of fair use may well be inappropriate for the realistic application of fair use to higher education. Such guidelines are too often an unduly narrow or rigid definition of fair use, and they usually impose additional restrictions and conditions that are not part of the law. No such guideline has been read into the law by Congress or the courts, and the guidelines are not binding. Fair use must be determined according to the circumstances of each situation. For a useful

approach to determining, in good faith, the application of fair use, see the checklist of factors attached to this policy.

Single copies

For teaching, including preparation for teaching, and for scholarly research, an instructor may make, or have made at his or her individual request, a single copy of:

- one chapter from a book;
- one article from a periodical or newspaper;
- one short story, essay, or short poem;
- one chart, graph, diagram, drawing, cartoon, or picture from one book or periodical.

Multiple copies

For one-time distribution in class to students, an instructor may make, or have made, multiple copies if he or she:

- makes no more than one for each student;
- includes the notice of copyright;
- is selective and sparing in choosing poetry, prose and illustrations;
- makes no charge to the student beyond actual cost of photocopying;
- the copying meets the tests of "brevity" AND "spontaneity" AND "cumulative effect" as defined below:

√ The copying meets the test of "brevity":

Poetry: a complete poem of fewer than 250 words printed on no more than two pages, or an excerpt from a longer poem not to exceed 250 words;

Prose: a complete article, story or essay of less than 2500 words, or an excerpt from any prose work of not more than 1000 words or 10% of the work, whichever is LESS, but in any event a minimum of 500 words;

(Each of the numerical limits above may be expanded to permit completion of an unfinished prose paragraph or line of a poem.)

Illustrations: one chart, graph, diagram, drawing, cartoon or picture per book or periodical issue;

“Special” works (poetry and/or prose that combine language and illustration, such as children’s books) may not be reproduced in its entirety. However,

excerpts may be reproduced of no more than two pages, totaling less than 10% of the work.

AND

√ The copying meets the test of "spontaneity":

The copying is at the instance and inspiration of the individual teacher; 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.

AND

√ The copying meets the "cumulative effect" test:

The copying of the material is for only one course, with no more than one copy per student in the course;
Not more than one short poem, article, story or essay or two excerpts of the above may be copied from the same author, nor more than three copies from the same collective work or periodical volume during one class term;
There shall be no more than nine instances of such multiple copying for one course during one class term.

In any case of photocopying that meets the above requirements, the original copyright notice must appear on all copies of the work.

III. Using Copyrighted Media Materials Under the Fair Use Guidelines

A. PERFORMANCE OF A COPYRIGHTED WORK

The copyright law gives the author or owner of an original work the exclusive right to perform or display the copyrighted work publicly, as in literary, musical, dramatic, or choreographic works, pantomimes, motion pictures and other audiovisual works, or works of art. To perform or display a work "publicly" means 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. Public performance rights purchased from the distributor of the work are required for all public showings.

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances

in which a film or video may be "performed". For example, videocassettes from a video rental outlet usually bear a label that specifies "Home Use Only". However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

B. FILMS AND VIDEO

1. Classroom Use

17 U.S.C. 110 (1) of the copyright law creates an exception to the copyright holder's exclusive right of performance. The "face-to-face" exemption allows an educator to perform a work (including home use video) in class, as long as the following criteria are met:

- applies only to non-profit educational institutions;
- applies only to instructional activities in the classroom where the teacher and students are in the same location;
- covers performances of copyrighted works by teachers, students, and guest lecturers;
- the audience must be composed of members of one class only;
- the performance must be part of "systematic instruction," which does not include recreational or cultural programs;
- the performance must take place in a classroom or similar place devoted to instruction (i.e., not a gymnasium, auditorium, class play, graduation, athletic event, etc.);
- must use a lawfully made copy of the film or video. When a professor has taken parts of copyrighted materials to make the copy, whether or not the copy was lawfully made depends upon an analysis of the four "fair use" factors. The face-to-face exemption itself does not authorize any copying.

There are no exceptions to the above requirements.

2. Uses Outside the Classroom

Besides use in classrooms, videocassettes and videodiscs that are owned by the College may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in Schaffer Library. Videos may also be viewed at home (e.g., in a dorm room), so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall living room, require explicit permission from the copyright owner for "public performance" rights. The Library's online catalog includes the note "On-campus Public Performance Rights Secured" for videos with that status. No fees for

viewing a video are permitted even when public performance rights are obtained.

3. Satellite/Closed Circuit Reception and Transmission

Broadcast and cable rights are not covered in the fair use doctrine or the face-to-face instructional exception. A separate contract must be negotiated for these rights. This requirement also applies to interactive television.

The predominance of distance learning activities raises new questions and challenges in meeting copyright guidelines. Permission to use copyrighted videocassettes for distance learning purposes must be obtained from the copyright owner.

4. Music

a. Permissible Uses

Copyrighted music material may be photocopied under the following circumstances:

- emergency copying 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;
- multiple copies of excerpts of works may be made for academic purposes other than performance, provided that such copying does not exceed 10% of the work and no more than one copy per student is made;
- 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 altered or lyrics added;
- 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 instructor;
- 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 instructor for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or instructor. This pertains only to the copyrights of the music itself and not to any copyright, which may exist in the sound recording;
- single copies for personal or library reserve use (academic purposes other than performance). An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

b. Prohibitions

Photocopying of copyrighted music material is prohibited under the following circumstances:

- copying to create or replace or substitute for anthologies, compilations, or collective works;
- copying of or from works intended to be "consumable" in the course of study or teaching such as workbooks, exercises, standardized tests, answer sheets, and like material;
- copying for the purpose of performance, except as noted in "permissible uses" above;
- copying for the purpose of substituting for the purchase of music except as noted in "permissible uses" above;
- copying without inclusion of the copyright notice, which appears on the printed copy.

c. Performances

The copyright owner has the exclusive right to control the performance of a musical work. However, music educators and others have special needs, which are addressed in 17 U.S.C. 110 as limitations on the exclusive right of performance. The following uses are **not** infringements:

- performance of any copyrighted work by instructors or students in the course of face-to-face teaching activities, in a non-profit educational institution, in a classroom or similar place devoted to instruction;
- performance of non-dramatic literary or musical work on closed circuit television to other classrooms or to disabled students for teaching purposes only if the transmission is part of the systematic instructional activities of a non-profit educational institution, and only if the performance is directly related and of material assistance to the teaching content of the program;
- performance of a non-dramatic literary or musical work at a school concert if there is no purpose of direct or indirect commercial advantage, no fee or compensation paid to the performers, promoters or organizers, and no admission charge; if there is an admission charge, all of the proceeds must be used only for educational or charitable purposes; and the performance may not take place if the copyright owner objects in writing seven days before the performance;
- performance of non-dramatic literary or musical works or of dramatico-musical works of a religious nature, in the course of services at places of worship or at a religious assembly.

d. Preparation of Derivative Works

The copyright owner has the exclusive right to make arrangements of a piece of music. However, the guidelines describing what is considered to be fair use of music material set forth the following exceptions:

- 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 altered or lyrics added;
- the compulsory license for recording includes the privilege of making a musical arrangement of a work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work. This privilege is not meant to extend to "serious" compositions.\

Anyone wishing to arrange copyrighted work with the exceptions noted above must obtain permission from the copyright owner.

e. Sound Recordings

The copyright owner has the exclusive right to reproduce copyrighted works in phonorecords. Limited exceptions to this right are set forth in the guidelines as outlined above. Once phonorecords of a non-dramatic musical work have been distributed to the public in the U.S. under authority of the copyright owner, any other person may obtain a compulsory license to record the work by complying with certain procedures and by payment of the royalty as provided in 17 U.S.C. 115. This compulsory license requirement applies when a music educator wishes to record a student performance as part of the learning process and distribute copies of the recording within the community. Bear in mind that the first recording of a work and its distribution in recorded form requires the consent of the copyright owner.

f. Copying Videotapes /Off-Air Recording of Broadcasts, Including Satellite TV

Copying videotapes without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price [Section 108 of the Copyright Act of 1976].

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes", an official part of the Copyright Act's legislative history, applies to most off-air recording [Virginia M. Helms, *supra*]:

- Videotaped recordings may be kept for no more than **45 calendar days** after the recording date, at which time the tapes must be erased;
- Videotaped recordings may be shown to students only within the **first 10 school days** of the 45-day retention period;
- Off-air recordings must be made only **at the request** of an individual instructor for **instructional** purposes, not by staff in anticipation of later requests;
- The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement;
- The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future;
- If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording;
- The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety;
- All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Certain public broadcasting services (Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, and Agency for Instructional Television) impose similar restrictions but limit use to only the seven-day period following local broadcast [Virginia M. Helms, *supra*].

g. Network Distribution of Video

The College must negotiate for closed-circuit distribution rights, if possible, when purchasing access to satellite broadcasts or obtaining works on videotape. Without explicit permission for closed-circuit distribution, network transmission of a video is not permissible unless "Classroom Use" requirements are met.

C. SLIDES AND PHOTOGRAPHS

1. Reproduction

Whenever possible, Union will either purchase slides and photographs from authorized sources or will borrow from institutions which offer licensing for single-copy reproduction. In either case, further copying would be prohibited.

Occasionally, slides of copyrighted images that are needed for classroom purposes cannot be obtained ready-made in a timely fashion. If the process of slide making would fail to meet Fair Use requirements, the requestor must demonstrate that the copyright owner has granted permission.

2. Display

Copyright ownership of slides and photographs encompasses control over display as well as reproduction. However, Section 110 of the Copyright Act of 1976 addresses the display of copyrighted slides and photographs in educational settings by allowing "display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction" so long as the copy of the artwork was lawfully made. Furthermore, the purpose of the display must be integral to the course.

D. EDUCATIONAL MULTIMEDIA

These guidelines specify how much of copyright-protected sources may be included in multimedia products prepared by students or faculty members for course-related work. Use of larger portions requires permission from copyright owners. Creators of multimedia products may prepare a total of three copies, one of which is for preservation and replacement purposes only. One of the copies may be placed on Library Reserve. An exception is allowed for joint projects: each principal creator may retain a copy. Fair Use status expires two years after the first instructional use of a particular multimedia product.

- **Motion Media.** Up to 10% or 3 minutes of a source, whichever is less.
- **Text.** Up to 10% or 1000 words of a source, whichever is less. An entire poem of less than 250 words, but no more than 3 poems or excerpts by one poet. No more than 5 poems or excerpts from one anthology.
- **Music, Lyrics, Music Video.** Up to 10% but not more than 30 seconds total from an individual work.
- **Illustrations, Photographs.** No more than 5 images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.
- **Numerical Data Sets.** Up to 10% or 2500 fields or cell entries, whichever is less.

- **Internet Sources.** Though it can be difficult to determine what is copyright protected and what is in the public domain, the multimedia creator is responsible for adhering to copyright law.

Opening screen notice

"Certain materials are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use."

Credit the sources and display the copyright notice and copyright ownership information if shown in the original source. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright notice includes the word "Copyright" or the copyright symbol, the name of the copyright holder, and the year of first publication.

E. COMPUTER SOFTWARE/DATABASES

Union College prohibits the improper copying, distribution, or use of contractually protected and/or copyrighted computer software. "Copying" not only entails duplicating floppy disks, CD-ROMs, etc., but also takes place when a program is transferred from a floppy (or other media) onto a hard disk, sent over a local area network, or transmitted over long distance lines. The following prohibitions and areas of caution are to be observed by all students, faculty, and staff:

- Use of software may be restricted. For example, use of software may be restricted to a particular computer at a particular site. In such cases, permission of the copyright owner must be obtained in order to use the software on a different computer at a different site.
- Individual employees who acquire software for their personal use in the course of their duties at Union College must obtain any necessary licenses. If the software is purchased by the College, any licenses will be in the name of the institution. Employees may not make copies of software for associates, but rather may transfer their use to a colleague. In doing so, the original user loses the right to continued use of the software and may not retain any copy of it.
- If the College supplies licensed software to students in the course of instruction in a classroom, then sufficient licenses must be held by the College for all computers in that classroom.
- If the College supplies licensed software to students in the course of instruction in other than a classroom situation, sufficient licenses must be held by the College for all students in the class and for the instructor.

- If more than one class is using licensed software during the same quarter, sufficient licenses must be held by the College for all such classes.
- Shareware is easily identifiable through explicit statements within the software documentation, or identification is displayed on the computer screen. Unless these explicit statements identify the software as shareware, the user should assume that it may NOT be duplicated.
- Software not containing a copyright notice is not necessarily in the public domain. The user should consult with the manufacturer to ensure that such software may be copied freely.

Site licenses. Union College negotiates site licenses with software vendors whenever possible for software products that are selected for extensive use, since these arrangements provide the College community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

Software products that are not licensed to the College may also be used. However, copying is strictly limited except for backup purposes. Whether the software is transferred from the original to a hard disk or to an archival diskette, the backup copy is not to be used at all so long as the other copy is functional.

Lending of software by libraries. Libraries are permitted to lend software, but only for temporary use, not for copying. If the borrower transfers the software to a hard disk, the program must be deleted when the borrowed item is returned.

Common Questions:

Question: Is it all right to use a single-user licensed software disk on multiple computers for use at the same time?

No. If simultaneous use on multiple computers is necessary, a site licensing arrangement with the vendor may be arranged. Another possibility is that the vendor may offer a price break for multiple copies or "lab packs".

Question: What about borrowing software to load into the hard disk memory of my personal computer?

While the memory capacity of personal computers makes this very tempting, it is not within the realm of fair use unless you delete it from your computer when you return the borrowed copy. ***The point is that only one person at a time may use single-user licensed software.***

IV. Library Reserves

According to the American Library Association Model Policy Concerning College and University Photocopying for Classroom, Research, and Library Reserve, the reserve unit functions as an extension of the classroom when it makes course readings available to students, and reflects an individual student's right to photocopy for personal scholastic use under the doctrine of fair use. The following provisions governing such use are drawn from the ALA Model Policy:

General provisions

At the request of a faculty member, the College library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with the guidelines governing formal classroom distribution. In general, library employees may photocopy and/or accept copies of materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education requires, such as advanced independent study and research. Phonorecords, audiocassettes, videocassettes, and other media titles may be placed on reserve at the Learning Resource Center if they are legal copies with appropriate markings and identification.

Restrictions

1. Single copies placed on reserve. If the request calls for a single copy to be placed on reserve, the library may photocopy an entire article, an entire chapter from a book, or an entire poem.
2. Multiple copies placed on reserve. Requests for multiple copies to be placed on reserve should meet the following guidelines:
 - 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;
 - the number of copies should be reasonable in light of the number of students enrolled, and the difficulty and timing of assignments (in no case to exceed five copies of any given reading);
 - the material should contain a notice of copyright;
 - the effect of photocopying the material should not be detrimental to the market for the work (in general, the Libraries should own at least one copy of the work).

3. Anthologies. Schaffer Library will not accept anthologies of readings, also known as course packets, for deposit in the reserve units. Only individual articles, including reprints and photocopies, as well as books and other monographs will be accepted as readings reserved for classroom use.

4. Repeated use. Copies of copyrighted materials may not be retained on reserve for more than one term for any faculty member without permission to reproduce and distribute copies in this fashion from the copyright holder.

Electronic Reserves

Purpose of the Use

- Materials should be placed online only for the purpose of serving the needs of specified educational programs.
- Materials should be placed online only at the specific request of the instructor.
- Access to materials should be limited by password or other means to deter unauthorized access beyond students enrolled in the specific course for which the materials are needed.
- Students should not be charged a fee specifically or directly for access to materials placed online, and no person or unit at the university should benefit monetarily from the use of the material.

Nature of the Original Work

- The selected work should be relevant to the educational objectives of the course.
- The law of fair use applies more narrowly to highly creative works; accordingly, avoid substantial excerpts from novels, short stories, poetry, modern art images, and other such materials.
- Instructors should carefully review uses of “consumable” materials such as test forms and workbook pages that are meant to be used and repurchased.

Amount of the Work Used

- Materials placed online should generally be limited to brief works or brief excerpts from longer works. Common examples: a single chapter from a book, a single article from a journal, or individual news articles.
- The amount of the work placed online should be related directly to the educational objectives of the course.
- Effect of the Use on the Market for the Original
- Materials placed online should include a citation to the original source of publication and a form of a copyright notice. If the original work has a copyright notice (e.g., “Copyright 2009, Jane Smith”), copying that notice with the materials is probably a good idea. The instructor should also advise students that the materials are made available exclusively for use by students enrolled in the course and must not be distributed beyond that limited group.
- Access to materials should be limited by password or other means to deter unauthorized access beyond students enrolled in the specific course for which the materials are needed. (Password control or other limited access is also important to the “purpose” factor, as noted above.)
- The CMS or a course website should include only material for which the instructor, the library, or another unit of the educational institution possesses a lawfully obtained copy.

Alternative Means of Delivery

- Using Traditional Coursepacks: Consider using coursepacks if permission to post materials electronically is denied by the copyright owner but permission is available for creating hardcopies of the same materials.
- Requiring Students to Purchase Materials: Encourage students to purchase materials if available at reasonable cost, especially when assigning substantial reading. Simple

purchases seldom raise copyright issues, especially if the materials are ordered through the bookstore, online, or through other ordinary means.

V. Interlibrary Loan

The National Commission on New Technological Uses of Copyrighted Works (CONTU) has prepared a set of guidelines governing photocopying and interlibrary loan arrangements in conjunction with Section 108 of the copyright law. Their provisions are as follows:

A. Restrictions on Number of Copies

Periodicals

The Interlibrary Loan units may not ordinarily submit, during any calendar year, 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.

Books and collective works

The Interlibrary Loan units may not submit, during any calendar year, more than five requests for photocopies of excerpts from any given book or collective work in copyright.

Requests in excess of the above limits are subject to the copyright permissions process and payment of royalties, where applicable.

B. Record-keeping Requirements

The requesting library must maintain records of all such requests and fulfillments of requests for the current calendar year plus three previous calendar years.

C. Notice

All copies made by the Interlibrary Loan units and interlibrary loan order forms must bear a notice of copyright.

Schaffer Library endeavors to provide maximum participation in the interlibrary loan process for both Union College users and for other libraries that ask us to provide materials to fill their users' requests. At the same time, Schaffer Library attempts to follow the guidelines that were formulated by the National

Commission on New Technological Uses of Copyrighted Works (commonly referred to as the CONTU guidelines) to address the problem of copying in aggregate quantities as it might apply to the interlibrary loan process. Interlibrary loan operations consist of two distinct functions: borrowing and lending. The CONTU guidelines apply to both functions, but the responsibility for compliance falls primarily on the borrowing library.

Borrowing: All requests for materials not available in the Union College library should be referred directly to Interlibrary Loan (ILL) to determine whether such requests can be filled. Interlibrary Loan will make every attempt to obtain material not owned by Union College but needed by eligible Union College users without violating copyright law. ILL must search the title(s), find locations for the material, examine the time span of the articles involved, and determine whether the journal title(s) are available from commercial document suppliers, are covered by the Copyright Clearance Center, or are covered by fair use.

Lending: Since the CONTU Guidelines specifically state that the requesting entity shall maintain records of all requests it makes for copies, we will fill any request for a photocopy of an article as long as copyright compliance is indicated on the request form.

VI. Course Packs

Copyright litigation involving academic users has focused on these "anthologies", which are perceived as substituting for textbooks and thus as reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 1990 by Academic Books, Inc." Individuals who purchase course packets should not be charged in excess of cost.

VII. Preservation

Libraries and archives are permitted to copy published or unpublished works for the purpose of preservation (17 U.S.C. 108). Schaffer Library will observe the following conditions before reproducing library materials for preservation purposes:

1. Material comes from collections that are open to the public.
2. Reproduction is made with no purpose of commercial advantage.

3. Notice of copyright is included in the reproduction.
4. For published works not in the public domain, a suitable replacement at a fair price will be sought, and reproduction undertaken only if an acceptable replacement is unavailable.

Abiding by these guidelines, Schaffer Library will engage in preservation reproduction in the full range of formats, whether produced in house or at the Libraries' request through cooperative projects or by commercial vendors.

Copyright litigation involving academic users has focused on these "anthologies", which are perceived as substituting for textbooks and thus as reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 1990 by Academic Books, Inc." Individuals who purchase course packets should not be charged in excess of cost.

VIII. Unpublished Works

Manuscripts, letters and other unpublished materials are likely to be protected by copyright regardless of age, even if they lack a notice of copyright. Consult the College Archivist or Special Collections Librarian.

Unpublished works that belong to the Library or College Archives may be reproduced in facsimile format for preservation purposes or for deposit for research use in another library or archives. Copies may usually be made for individual researchers under the law's Fair Use provisions.

IX. Photocopying Which is Completely Unrestricted

A. Published Works Which Were Never Copyrighted

Anyone may photocopy, without restriction, works published prior to 1989 that do not have a notice of copyright.

A notice of copyright consists of the copyright symbol or the word "copyright," plus the first year of publication and the name of the copyright owner. Writings published without copyright notices prior to January 1, 1978 are not protected. Publication is defined to mean the distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or loan.

Notice requirements for works published between January 1, 1978, and February 28, 1989, were relaxed somewhat with respect to both the position of notices and the inadvertent omission of them. Effective March 1, 1989, the requirement that a work have a notice of copyright was abolished. Thus, any work created or published after March 1, 1989 is protected by copyright even if no notice of copyright is affixed.

B. Published Works With Expired Copyrights

Anyone may photocopy, without restriction, published works on which the copyright term and any renewals thereto have expired.

Copyrights dated 1920 (75 years prior to the current year) or later may or may not have expired, depending upon whether its owner renewed the copyright after the first term of protection. Thus it is recommended that photocopiers either assume the protection is still in effect, or ask the copyright owner or U.S. Copyright Office whether the work is still subject to copyright protection. Usually a publisher owns the copyright or knows the owner's location. If not, an owner can be located through the U.S. Copyright Office at the Library of Congress, Washington, D.C., 20559.

C. U.S. Government Publications

U.S. government publications may be photocopied without constraint, except to the extent that they contain copyrighted work from other sources. This classification consists of documents prepared by an officer or employee of the U.S. government as part of that person's official duties. It does not extend to documents published by others with the support of U.S. government grants or contracts. Because such documents may or may not be copyrighted, educators should consult the publication for a copyright notice.

X. Copyright and Distance Education

[See Appendix 4]

XI. Liability

Good faith increases the likelihood that activities are in fact fair use. Good faith reduces the risks of liability in the event of infringement. If faculty, librarians, and staff act in good faith and consistent with the Union College copyright policy and College duties, the general indemnification policy at Union College will also likely offer protection in the event of an infringement allegation. Good

faith increases the likelihood that activities are in fact fair use. Good faith reduces the risks of liability in the event of infringement. Good faith is also one important prerequisite to having the benefit of College assistance and support in the event that its faculty, staff, and librarians may face infringement allegations. Ultimately, good faith is best manifested through knowledge of, and reasonable application of, fair use.

Appendix 1

INTELLECTUAL PROPERTY: AN ASSOCIATION OF RESEARCH LIBRARIES STATEMENT OF PRINCIPLES

[from the Association of Research Libraries website: <http://www.arl.org/>. (adopted by the ARL membership, May 1994)]

"The primary objective of copyright is not to reward the labour of authors, but [t]o promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art."

-- Justice Sandra Day O'Connor (Feist Publications, Inc. v. Rural Telephone Service Co., 499 US 340, 349(1991))

AFFIRMING THE RIGHTS AND RESPONSIBILITIES OF THE RESEARCH LIBRARY COMMUNITY IN THE AREA OF COPYRIGHT

The genius of United States copyright law is that it balances the intellectual property rights of authors, publishers and copyright owners with society's need for the free exchange of ideas. Taken together, fair use and other public rights to utilize copyrighted works, as established in the Copyright Act of 1976, constitute indispensable legal doctrines for promoting the dissemination of knowledge, while ensuring authors, publishers and copyright owners protection of their creative works and economic investments. The preservation and continuation of these balanced rights in an electronic environment are essential to the free flow of information and to the development of an information infrastructure that serves the public interest.

The U.S. and Canada have adopted very different approaches to intellectual property and copyright issues. For example, the Canadian Copyright Act does not contain the special considerations for library and educational use found in the U.S. Copyright Act of 1976, nor does it place federal or provincial government works in the public domain. Because of these differences, this statement addresses these issues from the U.S. perspective.

Each year, millions of researchers, students, and members of the public benefit from access to library collections - access that is supported by fair use, the right of libraries to reproduce materials under certain circumstances, and other related provisions of the copyright law. These provisions are limitations on the rights of copyright owners. The loss of these provisions in the emerging

information infrastructure would greatly harm scholarship, teaching, and the operations of a free society. Fair use, the library and other relevant provisions must be preserved so that copyright ownership does not become an absolute monopoly over the distribution of and access to copyrighted information. In an electronic environment, this could mean that information resources are accessible only to those who are able to pay. The public information systems that libraries have developed would be replaced by commercial information vendors. In the age of information, a diminished scope of public rights would lead to an increasingly polarized society of information haves and have-nots.

Librarians and educators have every reason to encourage full and good-faith copyright compliance. Technological advancement has made copyright infringement easier to accomplish, but no less illegal. Authors, publishers, copyright owners, and librarians are integral parts of the system of scholarly communication and publishers, authors, and copyright owners are the natural partners of education and research. The continuation of fair use, the library and other relevant provisions of the Copyright Act of 1976 applied in an electronic environment offer the prospect of better library services, better teaching, and better research, without impairing the market for copyrighted materials.

Although the emerging information infrastructure is raising awareness of technological changes that pose challenges to copyright systems, the potential impact of technology was anticipated by the passage of the Copyright Act of 1976. Congress expressly intended that the revised copyright law would apply to all types of media. With few exceptions, the protections and provisions of the copyright statute are as relevant and applicable to an electronic environment as they are to a print and broadcast environment.

The research library community believes that the development of an information infrastructure does not require a major revision of copyright law at this time. In general, the stakeholders affected by intellectual property law continue to be well served by the existing copyright statute. Just as was intended, the law's flexibility with regard to dissemination media fosters change and experimentation in educational and research communication. Some specific legislative changes may be needed to ensure that libraries are able to utilize the latest technology to provide continued and effective access to information and to preserve knowledge.

The Association of Research Libraries affirms the following intellectual property principles as they apply to librarians, teachers, researchers, and other information mediators and consumers. We join our national leaders in the determination to develop a policy framework for the emerging information infrastructure that strengthens the Constitutional purpose of copyright law to advance science and the useful arts.

Statement of Principles

Principle 1: Copyright exists for the public good.

The United States copyright law is founded on a Constitutional provision intended to "promote the progress of Science and Useful Arts." The fundamental purpose of copyright is to serve the public interest by encouraging the advancement of knowledge through a system of exclusive but limited rights for authors and copyright owners. Fair use and other public rights to utilize copyrighted works, specifically and intentionally included in the 1976 revision of the law, provide the essential balance between the rights of authors, publishers and copyright owners, and society's interest in the free exchange of ideas.

Principle 2: Fair use, the library, and other relevant provisions of the Copyright Act of 1976 must be preserved in the development of the emerging information infrastructure.

Fair use and other relevant provisions are the essential means by which teachers teach, students learn, and researchers advance knowledge. The Copyright Act of 1976 defines intellectual property principles in a way that is independent of the form of publication or distribution. These provisions apply to all formats and are essential to modern library and information services.

Principle 3: As trustees of the rapidly growing record of human knowledge, libraries and archives must have full use of technology in order to preserve our heritage of scholarship and research.

Digital works of enduring value need to be preserved just as printed works have long been preserved by research libraries. Archival responsibilities have traditionally been undertaken by libraries because publishers and database producers have generally preserved particular knowledge only as long as it has economic value in the marketplace. As with other formats, the preservation of electronic information will be the responsibility of libraries and they will continue to perform this important societal role.

The policy framework of the emerging information infrastructure must provide for the archiving of electronic materials by research libraries to maintain permanent collections and environments for public access. Accomplishing this goal will require strengthening the library provisions of the copyright law to allow preservation activities, which use electronic or other appropriate technologies as they emerge.

Principle 4: Licensing agreements should not be allowed to abrogate the fair use and library provisions authorized in the copyright statute.

Licenses may define the rights and privileges of the contracting parties differently than those defined by the Copyright Act of 1976. But licenses and contracts should not negate fair use and the public right to utilize copyrighted works. The research library community recognizes that there will be a variety of payment methods for the purchase of copyrighted materials in electronic formats, just as there are differing contractual agreements for acquiring printed information. The research library community is committed to working with publishers and database producers to develop model agreements that deploy licenses that do not contract around fair use or other copyright provisions.

Principle 5: Librarians and educators have an obligation to educate information users about their rights and responsibilities under intellectual property law.

Institutions of learning must continue to employ policies and procedures that encourage copyright compliance. For example, the Copyright Act of 1976 required the posting of copyright notices on photocopy equipment. This practice should be updated to other technologies, which permit the duplication of copyrighted works.

Principle 6: Copyright should not be applied to U.S. government information.

The Copyright Act of 1976 prohibits copyright of U.S. government works. Only under selected circumstances has Congress granted limited exceptions to this policy. The Copyright Act of 1976 is one of several laws that support a fundamental principle of democratic government -- that the open exchange of public information is essential to the functioning of a free and open society. U.S. government information should remain in the public domain free of copyright or copyright-like restrictions.

Principle 7: The information infrastructure must permit authors to be compensated for the success of their creative works, and copyright owners must have an opportunity for a fair return on their investment.

The research library community affirms that the distribution of copyrighted information, which exceeds fair use, and the enumerated limitations of the law require the permission of and/or compensation to authors, publishers and copyright owners. The continuation of library provisions and fair use in an electronic environment has far greater potential to promote the sale of copyrighted materials than to substitute for purchase. There is every reason to believe that the increasing demand for and use of copyrighted works fostered by new information technologies will result in the equivalent or even greater compensation for authors, publishers and copyright owners. The information infrastructure however, must be based on an underlying ethos of abundance rather than scarcity. With such an approach, authors, copyright owners, and

publishers will have a full range of new opportunities in an electronic information environment and libraries will be able to perform their roles as partners in promoting science and the useful arts.

Appendix 2

FAIR USE IN THE ELECTRONIC AGE

[from the Association of Research Libraries website: <http://www.arl.org/>]

The following statement is an outgrowth of discussions among a number of library associations regarding intellectual property, and in particular, the concern that the interests and rights of copyright owners and users remain balanced in the digital environment.

The purpose of the document is to outline the lawful uses of copyrighted works by individuals, libraries, and educational institutions in the electronic environment. It is intended to inform ongoing copyright discussions and serve as a reference document for users and librarians. It is our goal that this Working Document be circulated widely and spark discussions on these issues. Thus the statement will continue to be a work in progress. We continue to welcome feedback on the statement.

This statement was developed by representatives of the following associations: [American Association of Law Libraries](#), [American Library Association](#), Association of Academic Health Sciences Library Directors, [Association of Research Libraries](#), [Medical Library Association](#), and [Special Libraries Association](#). This document has also been endorsed by the [Art Libraries Society of North America](#).

Fair Use In The Electronic Age: Serving The Public Interest

The primary objective of copyright is not to reward the labor of authors, but “[t]o promote the Progress of Science and useful Arts.” To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.

-- Justice Sandra Day O'Connor (Feist Publications, Inc. v. Rural Telephone Service Co., 499 US 340, 349(1991))

The genius of United States copyright law is that, in conformance with its constitutional foundation, it balances the intellectual property interests of authors, publishers and copyright owners with society's need for the free exchange of ideas. Taken together, fair use and other public rights to utilize copyrighted works, as confirmed in the Copyright Act of 1976, constitute indispensable legal doctrines for promoting the dissemination of knowledge,

while ensuring authors, publishers and copyright owners appropriate protection of their creative works and economic investments.

The fair use provision of the Copyright Act allows reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reporting, teaching(including multiple copies for classroom use), scholarship or research. Additional provisions of the law allow uses specifically permitted by Congress to further educational and library activities. The preservation and continuation of these balanced rights in an electronic environment as well as in traditional formats are essential to the free flow of information and to the development of an information infrastructure that serves the public interest.

It follows that the benefits of the new technologies should flow to the public as well as to copyright proprietors. As more information becomes available only in electronic formats, the public's legitimate right to use copyrighted material must be protected. In order for copyright to truly serve its purpose of "promoting progress," the public's right of fair use must continue in the electronic era, and these lawful uses of copyrighted works must be allowed without individual transaction fees.

Without infringing copyright, the public has a right to expect:

- to read, listen to, or view publicly marketed copyrighted material privately, on site or remotely;
- to browse through publicly marketed copyrighted material;
- to experiment with variations of copyrighted material for fair use purposes, while preserving the integrity of the original;
- to make or have made for them a first generation copy for personal use of an article or other small part of a publicly marketed copyrighted work or a work in a library's collection for such purpose as study, scholarship, or research; and
- to make transitory copies if ephemeral or incidental to a lawful use and if retained only temporarily.

Without infringing copyright, nonprofit libraries and other Section 108 libraries, on behalf of their clientele, should be able:

- to use electronic technologies to preserve copyrighted materials in their collections;
- to provide copyrighted materials as part of electronic reserve room service;
- to provide copyrighted materials as part of electronic interlibrary loan service;
- and
- to avoid liability, after posting appropriate copyright notices, for the unsupervised actions of their users.

Users, libraries, and educational institutions have a right to expect:

that the terms of licenses will not restrict fair use or other lawful library or educational uses;

that U.S. government works and other public domain materials will be readily available without restrictions and at a government price not exceeding the marginal cost of dissemination; and

that rights of use for nonprofit education apply in face-to-face teaching and in transmittal or broadcast to remote locations where educational institutions of the future must increasingly reach their students.

Carefully constructed copyright guidelines and practices have emerged for the print environment to ensure that there is a balance between the rights of users and those of authors, publishers, and copyright owners. New understandings, developed by all stakeholders, will help to ensure that this balance is retained in a rapidly changing electronic environment. This working statement addresses lawful uses of copyrighted works in both the print and electronic environments.

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Appendix 3

FAIR USE CHECKLIST

FAIR USE CHECKLIST: INTRODUCTION

Prepared by the Indiana University Copyright Management Center

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We are pleased to offer the following "[Checklist for Fair Use](#)" as a helpful tool for the academic community. We hope that it will serve two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. A reasonable fair-use analysis is based on four factors set forth in the fair-use provision of copyright law: [Section 107](#) of the [Copyright Act of 1976](#). The application of those factors depends on the particular facts of your situation, and changing one or more facts may alter the outcome of the analysis. The "checklist for fair use" derives from those four factors and from the judicial decisions interpreting copyright law.

For additional information about fair use and its application to the needs of education, read the following publications from the Copyright Management Center:

- [Fair Use: Overview and Meaning for Higher Education](#), Kenneth D. Crews
- [A Fair-Use Case Study: Using Copyrighted Materials On The World Wide Web](#), Dwayne K. Buttler

A second purpose of the checklist is to provide an important means for recording your decision-making process. Maintaining a record of your fair-use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet your educational objectives. The [Indiana University Policy on Fair Use of Copyrighted Works for Education and Research](#) requires reasonable and good-faith applications of fair use from all members of the university community. Once you have completed your application of fair use to a particular need, keep your completed checklist in your files for future

reference.

As you use the checklist and apply it to your situation, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will "favor fair use," and others may "oppose fair use." A key concern is whether you are acting reasonably in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. Only you can make that decision, and the IU policy empowers you to make it in a reasonable and good-faith manner.

To learn more about fair use and other aspects of copyright law, visit the Copyright Management Center website at <http://www.iupui.edu/~copyinfo/home.html>.

Checklist for Fair Use

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project.

Name:

Date:

Institution:

Project:

PURPOSE

Favoring Fair Use

Opposing Fair Use

Teaching (including multiple copies for classroom use)

Commercial activity

Research

Profiting from the use

Scholarship

Entertainment

Nonprofit Educational Institution

Bad-faith behavior

Criticism

Denying credit to original author

Comment

News reporting

Transformative or Productive use (changes the work for new utility)

Restricted access (to students or other appropriate group)

Parody

NATURE

Favoring Fair Use

Opposing Fair Use

Published work

Unpublished work

Factual or nonfiction based

Highly creative work (art, music, novels, films, plays)

Important to favored educational objectives

Fiction

AMOUNT*Favoring Fair Use**Opposing Fair Use*

Small quantity
Portion used is not central
or significant to entire work
Amount is appropriate for
favored educational purpose

Large portion or whole work used
Portion used is central to work
or "heart of the work"

EFFECT*Favoring Fair Use**Opposing Fair Use*

User owns lawfully acquired or
purchased copy of original work
One or few copies made

Could replace sale of copyrighted
work
Significantly impairs market or
potential market for copyrighted
work or derivative

No significant effect on the
market or potential market for
copyrighted work
No similar product marketed by
the copyright holder

Reasonably available licensing
mechanism for use of the
copyrighted work
Affordable permission available for
using work

Lack of licensing mechanism

Numerous copies made
You made it accessible on Web or in
other public forum
Repeated or long term use

Prepared as a service of the
Copyright Management Center at Indiana University
located on the campus of IUPUI
(317) 274-4400

Appendix 4

THE TEACH ACT

Distance Education and the TEACH Act

- [Legislative History](#)
- [New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act](#)
- [Related Files](#)

LEGISLATIVE HISTORY

- **November 2nd, 2002:** The "Technology, Education and Copyright Harmonization Act" (the TEACH Act), part of the larger Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush.
- **June 1, 2002:** The TEACH Act continues to be stalled in the House Judiciary Committee. We are continuing to work with other proponents of the bill and we encourage ALA members to press members of the committee to refer it for full vote of the House.
- **December 21, 2001:** We anticipated that the full House Judiciary Committee would mark up the TEACH Act shortly after Senate passage of the act, but that did not happen. Efforts to move the bill along were diverted by the events of September 11. ALA has urged the House Judiciary Committee to move the bill along in the Second Session of Congress and will be asking Representatives to vote for the updated distance education legislation.
- **August 28, 2001 :** In anticipation of the bill passing, OITP (the ALA Washington Office for Information Technology Policy) and NASULGC (National Association of State Universities and Land Grant Colleges), in collaboration with other education and library associations, convened a workshop in Washington, DC to discuss the pending "TEACH Act". Attendees from the library, education, legal and government relations communities addressed the contents of the legislation and prepared possible strategies for education and implementation. The Ford Foundation provided support for this workshop.
- **July 11, 2001:** The House of Representatives Judiciary Committee sub-committee on the Courts, Internet and Intellectual Property approved the

Senate bill. The full Judiciary Committee was then expected to mark up the measure but no date was set.

- **June 7, 2001:** The full Senate passed S. 487 with changes to the bill that were developed through extended discussions among the various stakeholders following the bill's introduction in March. S. 487 has the support of both the higher education community and the content community.

NEW COPYRIGHT LAW FOR DISTANCE EDUCATION: THE MEANING AND IMPORTANCE OF THE TEACH ACT

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This document is available as a pdf file (see "Related Files" below)

1. [The New Legislation](#)
2. [Background of Copyright Law](#)
3. [Context of Distance Education](#)
4. [Benefits of the TEACH Act](#)
5. [Requirements of the TEACH Act](#)
6. [Duties of Institutional Policymakers](#)
7. [Duties of Information Technology Officials](#)
8. [Duties of Instructors](#)
9. [Role for Librarians](#)
10. [Conclusion](#)

INTRODUCTION: THE NEW LEGISLATION

On November 2nd, 2002, the "Technology, Education and Copyright Harmonization Act" (the TEACH Act), part of the larger Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush. Long anticipated by educators and librarians, TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education-including on websites

and by other digital means--without permission from the copyright owner and without payment of royalties.

The new law offers many improvements over the previous version of Section 110(2), but in order to enjoy its advantages, colleges, universities, and other qualified educational institutions will need to meet the law's rigorous requirements. Educators will not be able to comply by either accidental circumstances or well-meaning intention. Instead, the law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.

This paper principally summarizes the new standards and requirement established by the TEACH Act. The statutory language itself is often convoluted and does not necessarily flow gracefully. This paper accordingly isolates the various requirements and benefits of the new law and organizes them in a manner that may be helpful to educators and others seeking to understand and comply with the law. This paper will also suggest strategies and implementation methods that an educational institution may choose to follow. In general, this paper will outline the benefits of the TEACH Act and organize the law's requirements into three groups of duties that may be assigned to three divisions within a college or university for implementation: duties of institutional policymakers; duties of information technology officials; and duties of faculty members or other instructional staff. In this multifaceted process, librarians will also find an important role.

BACKGROUND OF COPYRIGHT LAW

To understand the magnitude of the issues at stake, one needs to comprehend not only the growth of distance education, but also the expansion of copyright protection. Much of the material used in educational programs-in the classroom or through "transmission"-is protected under copyright law. Copyright protection vests automatically in nearly all works that are "original works of authorship" and "fixed in any tangible medium of expression" (Section 102(a)). Hence, most writings, images, artworks, videotapes, musical works, sound recordings, motion pictures, computer programs, and other works are protected by copyright law. That protection applies even if the work lacks any form of "copyright notice" and is not registered with the U.S. Copyright Office. Some works are in the "public domain" and do not have copyright protection. For example, works of the U.S. government are generally barred from copyright protection, and the copyrights on other works eventually expire. Copyrights today usually last through the life of the author, plus seventy years. Quite simply, the law protects vast quantities of works for many, many years.

When educators use any of these works in their teaching, they are using copyright-protected materials. Among the rights of copyright owners are rights to make copies and rights to make public performances and public displays of the works. An assembled-or even dispersed-group of students may well

constitute the "public" under the law. Consequently, educators frequently incur possible violations of owners' rights whenever they copy materials as handouts, upload works to websites, "display" slides or other still images, or "perform" music, videos, and other works. In the context of traditional, face-to-face teaching, educators long have debated the application of "fair use" to making copies, and the Copyright Act since 1976 has included a relatively simple and broad provision allowing "performances" and "displays" in the face-to-face classroom setting (Section 110(1)). The rules for distance education, however, are significantly different. Both the meaning of fair use and the details of the specific statute (Section 110(2)) become much more rigorous when the materials are uploaded to websites, transmitted anywhere in the world, and are easily downloaded, altered, or further transmitted by students and other users—all posing possible threats to the interests of copyright owners.

CONTEXT OF DISTANCE EDUCATION

Comprehending the practical implications of the new legislation also requires understanding the congressional vision of "distance education" and the relationship between educators and the institution. The TEACH Act is a clear signal that Congress recognizes the importance of distance education, the significance of digital media, and the need to resolve copyright clashes. The new law is, nevertheless, built around a vision that distance education should occur in discrete installments, each within a confined span of time, and with all elements integrated into a cohesive lecture-like package.

In other words, much of the law is built around permitting uses of copyrighted works in the context of "mediated instructional activities" that are akin in many respects to the conduct of traditional classroom sessions. The law anticipates that students will access each "session" within a prescribed time period and will not necessarily be able to store the materials or review them later in the academic term; faculty will be able to include copyrighted materials, but usually only in portions or under conditions that are analogous to conventional teaching and lecture formats. Stated more bluntly, this law is not intended to permit scanning and uploading of full or lengthy works, stored on a website, for students to access throughout the semester—even for private study in connection with a formal course.

The TEACH Act suggests another general observation: Many provisions focus entirely on the behavior of educational institutions, rather than the actions of instructors. Consequently, the institution must impose restrictions on access, develop new policy, and disseminate copyright information. The institution is allowed to retain limited copies for limited purposes, but the statute indicates nothing about whether the individual instructor may keep a copy of his or her own instructional program. Most important, educational institutions are probably at greater risk than are individuals of facing infringement liability, and individual instructors will most likely turn to their institutions for guidance

about the law. These circumstances will probably motivate institutions to become more involved with oversight of educational programs and the selection and use of educational materials. This substantive oversight may raise sensitive and important issues of academic freedom.

One consequence of these developments is apparent: The pursuit and regulation of distance-education programs will become increasingly centralized within our educational institutions. Because the law calls for institutional policymaking, implementation of technological systems, and meaningful distribution of copyright information, colleges and universities may well require that all programs be transmitted solely on centralized systems that meet the prescribed standard. Because the law permits uses of only certain copyrighted materials, institutions will feel compelled to assure that faculty are apprised of the limits, and some colleges and universities will struggle with whether to monitor the content of the educational programming.

Some news announcements anticipating the TEACH Act have suggested that the use of materials in distance education will be on a par with the broad rights of performance and display allowed in the face-to-face classroom. This characterization of the law neglects the many differences between the relevant statutes. In the traditional classroom, the Copyright Act long has allowed instructors to "perform" or "display" copyrighted works with few restrictions (Section 110(1)). By contrast, both the previous and the new versions of the statute applicable to distance education are replete with conditions, limits, and restrictions. Make no mistake: While the TEACH Act is a major improvement over the previous version of Section 110(2), the law still imposes numerous requirements for distance education that reach far beyond the modest limits in the traditional classroom.

BENEFITS OF THE TEACH ACT

The primary benefit of the TEACH Act for educators is its repeal of the earlier version of Section 110(2), which was drafted principally in the context of closed-circuit television. That law permitted educators to "perform" only certain types of works and generally allowed transmissions to be received only in classrooms and similar locations. These restrictions, and others, usually meant that the law could seldom apply to the context of modern, digital transmissions that might utilize a range of materials and need to reach students at home, at work, and elsewhere. The new version of Section 110(2) offers these explicit improvements:

- Expanded range of allowed works. The new law permits the display and performance of nearly all types of works. The law no longer sweepingly excludes broad categories of works, as did the former law. However, a few narrow classes of works remain excluded, and uses of some types of works are subject to quantity limitations.

- Expansion of receiving locations. The former law limited the transmission of content to classrooms and other similar location. The new law has no such constraint. Educational institutions may now reach students through distance education at any location.
- Storage of transmitted content. The former law often permitted educational institutions to record and retain copies of the distance-education transmission, even if it included copyrighted content owned by others. The new law continues that possibility. The law also explicitly allows retention of the content and student access for a brief period of time, and it permits copying and storage that is incidental or necessary to the technical aspects of digital transmission systems.
- Digitizing of analog works. In order to facilitate digital transmissions, the law permits digitization of some analog works, but in most cases only if the work is not already available in digital form.

None of these benefits, however, is available to educators unless they comply with the many and diverse requirements of the law. The rights of use are also often limited to certain works, in limited portions, and only under rigorously defined conditions. The remainder of this paper examines those requirements.

REQUIREMENTS OF THE TEACH ACT

This paper groups the law's many new requirements according to the unit within the institution that will likely be responsible for addressing or complying with each.

Duties of Institutional Policymakers

1. Accredited nonprofit institution. The benefits of the TEACH Act apply only to a "government body or an accredited nonprofit educational institution." In the case of post-secondary education, an "accredited" institution is "as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education." Elementary and secondary schools "shall be as recognized by the applicable state certification or licensing procedures." Most familiar educational institutions will meet this requirement, but many private entities-such as for-profit subsidiaries of nonprofit institutions-may not be duly "accredited."

2. Copyright policy. The educational institution must "institute policies regarding copyright," although the language does not detail the content of those policies. The implication from the context of the statute, and from the next requirement about "copyright information," suggests that the policies would specify the standards educators and others will follow when incorporating copyrighted works into distance education. For most educational institutions, policy development is a complicated process, involving lengthy

deliberations and multiple levels of review and approval. Such formal policymaking might be preferable, but informal procedural standards that effectively guide relevant activities may well satisfy the statutory requirement. In any event, proper authorities within the educational institution need to take deliberate and concerted action.

3. Copyright information. The institution must "provide informational materials" regarding copyright, and in this instance the language specifies that the materials must "accurately describe, and promote compliance with, the laws of United States relating to copyright." These materials must be provided to "faculty, students, and relevant staff members." Some of this language is identical to a statutory requirement that educational institutions might already meet regarding their potential liability as an "online service provider." In any event, the responsibility to prepare and disseminate copyright information is clear; institutions might consider developing websites, distributing printed materials, or tying the information to the distance-education program, among other possible strategies.

4. Notice to students. In addition to the general distribution of informational materials, the statute further specifies that the institution must provide "notice to students that materials used in connection with the course may be subject to copyright protection." While the information materials described in the previous section appear to be more substantive resources detailing various aspects of copyright law, the "notice" to students may be a brief statement simply alerting the reader to copyright implications. The notice could be included on distribution materials in the class or perhaps on an opening frame of the distance-education course. Taking advantage of electronic delivery capabilities, the educational materials may include a brief "notice" about copyright, with an active link to more general information resources.

5. Enrolled students. The transmission of content must be made "solely for . . . students officially enrolled in the course for which the transmission is made." The next session will examine the technological restrictions on access, but in addition, the law also requires that the transmission be "for" only these specific students. Thus, it should not be broadcast for other purposes, such as promoting the college or university, generally edifying the public, or sharing the materials with colleagues at other institutions. Educators might address this requirement through technological restrictions on access, as mentioned in the following section.

Duties of Information Technology Officials

1. Limited access to enrolled students. The new law calls upon the institution to limit the transmission to students enrolled in the particular course "to the extent technologically feasible." Therefore, the institution may need to create a system that permits access only by students registered for that specific class.

As a practical matter, the statute may lead educational institutions to implement technological access controls that are linked to enrollment records available from the registrar's office.

2. Technological controls on storage and dissemination. While the transmission of distance education content may be conducted by diverse technological means, an institution deploying "digital transmissions" must apply technical measures to prevent "retention of the work in accessible form by recipients of the transmission . . . for longer than the class session." The statute offers no clarification about the meaning of a "class session," but language throughout the statute suggests that any given transmission would require a finite amount of time, and students would be unable to access it after a designated time. Also, in the case of "digital transmissions," the institution must apply "technological measures" to prevent recipients of the content from engaging in "unauthorized further dissemination of the work in accessible form." Both of these restrictions address concerns from copyright owners that students might receive, store, and share the copyrighted content. Both of these provisions of the statute call upon the institution to implement technological controls on methods for delivery, terms of accessibility, and realistic abilities for students to download or share copyrighted content. These provisions specifically demand application of "technological measures" that would restrict uses of the content "in the ordinary course of their operations." In other words, when the restrictive controls are used in an "ordinary" manner, they will safeguard against unauthorized reproduction and dissemination. This language apparently protects the institution, should someone "hack" the controls and circumvent imperfect technology.

3. Interference with technological measures. If the content transmitted through "digital transmissions" includes restrictive codes or other embedded "management systems" to regulate storage or dissemination of the works, the institution may not "engage in conduct that could reasonably be expected to interfere with [such] technological measures." While the law does not explicitly impose an affirmative duty on educational institutions, each institution is probably well advised as a practical matter to review their technological systems to assure that systems for delivery of distance education do not interrupt digital rights management code or other technological measures used by copyright owners to control their works.

4. Limited temporary retention of copies. The statute explicitly exonerates educational institutions from liability that may result from most "transient or temporary storage of material." On the other hand, the statute does not allow anyone to maintain the copyrighted content "on the system or network" for availability to the students "for a longer period than is reasonably necessary to facilitate the transmissions for which it was made." Moreover, the institution may not store or maintain the material on a system or network where it may be accessed by anyone other than the "anticipated recipients."

5. Limited long-term retention of copies. The TEACH Act also amended Section 112 of the Copyright Act, addressing the issue of so-called "ephemeral recordings." The new Section 112(f)(1) explicitly allows educational institutions to retain copies of their digital transmissions that include copyrighted materials pursuant to Section 110(2), provided that no further copies are made from those works, except as allowed under Section 110(2), and such copies are used "solely" for transmissions pursuant to Section 110(2). As a practical matter, Congress seems to have envisioned distance education as a process of installments, each requiring a specified time period, and the content may thereafter be placed in storage and outside the reach of students. The institution may, however, retrieve that content for future uses consistent with the new law. Incidentally, the TEACH Act did not repeal the earlier language of Section 112 that generally allowed educational institutions to keep some copies, such as videotapes, of educational transmissions for a limited period of time.

Duties of Instructors

Thus far, most duties and restrictions surveyed in this examination of the TEACH Act have focused on responsibilities of the institution and its policymakers and technology supervisors. None of the details surveyed so far, however, begins to address any parameters on the substantive content of the distance-education program. Under traditions of academic freedom, most such decisions are left to faculty members who are responsible for their own courses at colleges and universities. Consequently, to the extent that the TEACH Act places restrictions on substantive content and the choice of curricular materials, those decisions are probably best left to the instructional faculty. Faculty members are best positioned to optimize academic freedom and to determine course content. Indeed, the TEACH Act does establish numerous detailed limits on the choice of content for distance education. Again, the issue here is the selection of content from among copyrighted works that an instructor is seeking to use without permission from the copyright owner.

1. Works explicitly allowed. Previous law permitted displays of any type of work, but allowed performances of only "nondramatic literary works" and "nondramatic musical works." Many dramatic works were excluded from distance education, as were performances of audiovisual materials and sound recordings. The law was problematic at best. The TEACH Act expands upon existing law in several important ways. The new law now explicitly permits:

- Performances of nondramatic literary works;
- Performances of nondramatic musical works;
- Performances of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; and

- Displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session."

2. Works explicitly excluded. A few categories of works are specifically left outside the range of permitted materials under the TEACH Act. The following materials may not be used:

- Works that are marketed "primarily for performance or display as part of mediated instructional activities transmitted via digital networks"; and
- Performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act, if the educational institution "knew or had reason to believe" that they were not lawfully made and acquired.

The first of these limitations is clearly intended to protect the market for commercially available educational materials. For example, specific materials are available through an online database, or marketed in a format that may be delivered for educational purposes through "digital" systems, the TEACH Act generally steers users to those sources, rather than allowing educators to digitize the upload their own copies.

3. Instructor oversight. The statute mandates the instructor's participation in the planning and conduct of the distance education program and the educational experience as transmitted. An instructor seeking to use materials under the protection of the new statute must adhere to the following requirements:

- The performance or display "is made by, at the direction of, or under the actual supervision of an instructor";
- The materials are transmitted "as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities" of the educational institution; and
- The copyrighted materials are "directly related and of material assistance to the teaching content of the transmission."

The requirements share a common objective: to assure that the instructor is ultimately in charge of the uses of copyrighted works and that the materials serve educational pursuits and are not for entertainment or any other purpose. A narrow reading of these requirements may also raise questions about the use of copyrighted works in distance-education programs aimed at community service or continuing education. While that reading of the statute might be rational, it would also be a serious hindrance on the social mission of educational institutions.

4. Mediated instructional activities. In perhaps the most convoluted language of the bill, the statute directs that performances and displays, involving a "digital transmission," must be in the context of "mediated instructional activities." This language means that the uses of materials in the program must be "an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting." In the same provision, the statute specifies that "mediated instructional activities" do not encompass uses of textbooks and other materials "which are typically purchased or acquired by the students." The point of this language is to prevent an instructor from including, in a digital transmission, copies of materials that are specifically marketed for and meant to be used by students outside of the classroom in the traditional teaching model. For example, the law is attempting to prevent an instructor from scanning and uploading chapters from a textbook in lieu of having the students purchase that material for their own use. The provision is clearly intended to protect the market for materials designed to serve the educational marketplace. Not entirely clear is the treatment of other materials that might ordinarily constitute handouts in class or reserves in the library. However, the general provision allowing displays of materials in a quantity similar to that which would be displayed in the live classroom setting ("mediated instructional activity") would suggest that occasional, brief handouts-perhaps including entire short works-may be permitted in distance education, while reserves and other outside reading may not be proper materials to scan and display under the auspices of the new law.

5. Converting analog materials to digital formats. Troublesome to many copyright owners was the prospect that their analog materials would be converted to digital formats, and hence made susceptible to easy downloading and dissemination. Some copyright owners have held steadfast against permitting digitization in order to control uses of their copyrighted materials. The TEACH Act includes a prohibition against the conversion of materials from analog into digital formats, except under the following circumstances:

- The amount that may be converted is limited to the amount of appropriate works that may be performed or displayed, pursuant to the revised Section 110(2); and
- A digital version of the work is not "available to the institution," or a digital version is available, but it is secured behind technological protection measures that prevent its availability for performing or displaying in the distance-education program consistent with Section 110(2).

These requirements generally mean that educators must take two steps before digitizing an analog work. First, they need to confirm that the exact material converted to digital format is within the scope of materials and "portion" limitations permitted under the new law. Second, educators need to check for

digital versions of the work available from alternative sources and assess the implications of access restrictions, if any.

Role for Librarians

Nothing in the TEACH Act mentions duties of librarians, but the growth and complexity of distance education throughout the country have escalated the need for innovative library services. Fundamentally, librarians have a mission centered on the management and dissemination of information resources. Distance education is simply another form of exactly that pursuit. More pragmatically, distance education has stirred greater need for reserve services and interlibrary loans in order to deliver information to students in scattered locations. Librarians are also often the principal negotiators of licenses for databases and other materials; those licenses may grant or deny the opportunity to permit access to students located across campus or around the world.

Within the framework of the TEACH Act, librarians may find many new opportunities to shape distance-education programs, such as:

- Librarians may participate in the development of copyright policy, including policies on fair use that long have been of central importance to library services.
- Librarians may take the lead in preparing and gathering copyright information materials for the university community. Those materials may range from a collection of books to an innovative website linking materials of direct relevance.
- Librarians may retain in the library collections copies of distance-education transmissions that the institution may make and hold consistent with the law. In turn, the librarians will need to develop collection policies, usage guidelines, and retention standards consistent with limits in the law.
- Many materials used in distance education will come from the library collections, and librarians may be called upon to locate and deliver to educators proper materials to include in the transmissions. Librarians may need to evaluate materials based on the allowable content limits under the law.
- Librarians often negotiate the licenses for acquisition of many materials. To the extent that the law imposes undesirable restrictions, the librarians are in a position to negotiate necessary terms of use at the time of making the acquisition.

- Librarians have many opportunities for offering alternative access to content that cannot be included lawfully in the distance-education programming. When materials may not be lawfully scanned and uploaded, the library may respond with expanded reserve services, or enhanced database access, or simply purchasing alternative formats or multiple copies of needed works.
- Librarians long have recognized the importance of fair use and often have the best grasp of the doctrine. Librarians are usually best positioned to interpret and apply fair use to situations and needs not encompassed by the rigorous details of the TEACH Act.
- Librarians may research and track developments related to the TEACH Act, including policies, information resources, and operating procedures implemented at other educational institutions. That effort can allow one university to learn from others, in order to explore the meaning of the law and to consider options for compliance.

Conclusion

The TEACH Act is an opportunity, but it is also a responsibility. The new law is a benefit, but also a burden. Implementing the law and enjoying its benefits will be possible only with concerted action by many parties within the educational institution. Because of the numerous conditions, and the limitations on permitted activities, many uses of copyrighted works that may be desirable or essential for distance education may simply be barred under the terms of the TEACH Act. Educators should seek to implement the TEACH Act, but they should also be prepared for exploring alternatives when the new law does not yield a satisfactory result. Among those alternatives:

- Employing alternative methods for delivering materials to students, including the expansion of diverse library services, as noted above.
- Securing permission from the copyright owners for the use of materials beyond the limits of the law.
- Applying the law of fair use, which may allow uses beyond those detailed in the TEACH Act.

One objective of the TEACH Act is to offer a right of use with relative clarity and certainty. Like many other such specific provisions in the Copyright Act, the new statutory language is tightly limited. An ironic result is that fair use—with all of its uncertainty and flexibility—becomes of growing importance. Indeed, reports and studies leading to the drafting and passage of the new law have made clear that fair use continues to apply to the scanning, uploading, and transmission of copyrighted materials for distance education, even after

enactment of the TEACH Act. A close examination of fair use is outside the scope of this particular paper, but fair use as applied to distance education will be the subject of further studies supported by the American Library Association.

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RELATED FILES

[Technological Requirements of the TEACH Act](#) (PDF File)

[New Copyright Law for Distance Education:](#) (PDF File)

[Gerald Heegers Senate Testimony concerning the TEACH Act of 2001](#) (PDF File)

[Highlights of S. 487](#) (PDF File)

[Letter to Representatives Hastert \(R-IL\) and Gephardt \(D-MO\) 8/5/02](#) (PDF File)

RELATED LINKS

[USPTO Report on Technological Protection Systems \(May 2003\)](#)

[TEACH Act Best Practices using Blackboard™](#)

[TEACH Act FAQs](#)

[U.S. Copyright Office Report](#)

Courtesy of the [American Library Association](#)

Appendix 5

Union College Policy on the Use of Peer-to-Peer (P2P) File Sharing Programs

Policy Date: August 19, 2010

The [HIGHER EDUCATION OPPORTUNITY ACT OF 2008](#) (Public Law 110-315) requires institutions to take steps to combat the unauthorized distribution of copyrighted materials through [illegal downloading](#) or [peer-to-peer distribution](#) of intellectual property. These requirements were effective upon enactment of the HEOA on August 14, 2008. The Department of Education posted the final regulations that institutions must implement effective July 1, 2010. You can read these regulations at:

<http://www.ifap.ed.gov/fregisters/FR102909GeneralandNonLoanProgrammaticFinalRule.html>.

Peer-to-peer (P2P) file sharing programs were developed to allow distribution and/or shared access to digitally stored information, such as computer programs, multimedia (music and video), documents, or electronic books. Examples of P2P file sharing programs include (but are not limited to) BitTorrent, Limewire, Kazaa, Gnutella, and Morpheus.

P2P file sharing programs are not necessarily illegal unless they aid in violating copyright laws by sharing copyright-protected files without authorization by the copyright owners. Most commercially produced music and movies are copyrighted and cannot be freely shared. Using P2P file sharing software to distribute copyrighted materials without the permission of the copyright holder is illegal and violates US copyright laws. Unauthorized distribution of copyrighted materials can lead to both civil and criminal penalties.

Union College does not examine the information **content** that is being transmitted over the network but we do limit and/or restrict the bandwidth certain **applications** (known P2P file sharing programs) can utilize on the network. Members of our community must follow institutional policies for appropriate use of technology resources as well as comply with all federal, New York State, and other applicable copyright laws.

Consumer Information

Annually, the following statement will be distributed to all Union College faculty, staff, and students:

Union College complies with the provisions of the [Digital Millennium Copyright Act \(DMCA\)](#). It is illegal, as described in the Federal law (Title

17 of the US Code, and more recently the Digital Millennium Copyright Act, 105 PL 304), to download, upload, or distribute in any fashion, copyrighted material, in any form without permission or a license to do so from the copyright holder.

Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

- Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.
- Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.
- Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.
- For more information, please see the Web site of the U.S. Copyright Office at www.copyright.gov, especially their FAQ's at www.copyright.gov/help/faq.

Legal Alternatives to P2P File Sharing

Schaffer Library provides a variety of music databases offering music at minimal or no cost to members of the Union College community:

- [Classical Music Library](#). Classical Music Library includes tens of thousands of licensed recordings that users can listen to on the Internet. The audio selections are cross-referenced to a database of supplementary reference information.
- [DRAM: Database of Recorded American Music](#). DRAM is a not-for-profit resource providing educational communities with on-demand streaming access to CD-quality audio, complete original liner notes and essays from independent record labels, and sound archives. Currently DRAM's collection contains nearly 2,300 albums worth of recordings from a distinctive set of 22 independent labels, from folk to opera, Native American to jazz, 19th century classical to

early rock, musical theater, contemporary, electronic and beyond. New labels being added on a regular basis.

- [Music Online](#). With Music Online, Alexander Street Press aims to provide the most comprehensive database in streaming audio, video, reference, and scores on the web. Music Online allows users cross search all of the music databases published by Alexander Street Press. Music Online brings together on a single cross-searchable platform the entire suite of Alexander Street Press music products that Schaffer Library subscribes to: African American Music Reference; American Song; Classical Music Library; Classical Music Reference Library; Classical Scores Library; Contemporary World Music; Jazz Music Library; Dance in Video; The Garland Encyclopedia of World Music Online; Opera in Video.
- [Naxos Music Library](#). Naxos Music Library is the most comprehensive collection of classical music available online. It includes the complete Naxos, Marco Polo and Da Capo catalogues of over 75,000 tracks, including Classical music, Historical recordings, Jazz, World, Folk and Chinese music. Users can read notes on the works being played as well as biographical information on composers or artists in Naxos's extensive database.
- [Smithsonian Global Sound](#). Smithsonian Global Sound, produced in partnership with Smithsonian Folkways Recordings, is a virtual encyclopedia of the world's musical and aural traditions. The collection provides listeners with an unprecedented variety of online resources that support the creation, continuity, and preservation of diverse musical forms. It includes the published recordings owned by the non-profit Smithsonian Folkways Recordings label and the archival audio collections of the legendary Folkways Records, Cook, Dyer-Bennet, Fast Folk, Monitor, Paredon and other labels. It also includes music recorded around the African continent by Dr. Hugh Tracey for the International Library of African Music (ILAM).

Other sites for legal alternatives to illegal downloading include:

- [Legal alternatives to illegal downloading](#)—from Illinois State University
- [File sharing FAQs](#)— from the University of Maryland
- [Legal online sources for copyrighted material](#)—from Reed College
- [Legal sources of online content](#)—from EDUCAUSE

Institutional Policies and Disciplinary Procedures

While Union College's Information Technology Services will not routinely monitor the contents of your Internet traffic, Union College is legally required to identify a person

accused of sharing copyrighted material if the information is subpoenaed. If a copyright infringement claim involving digital materials (music, video, software, or other) is received by Union College's Digital Millennium Copyright Act (DMCA) agent, the College is required to investigate. The following steps will be followed:

- Network registration information and usage logs will be checked in order to identify the computer system alleged to be involved;
- The user associated with the computer system will be identified;
- The user will be notified by the DMCA agent that there has been a copyright infringement claim made and that they must:
 - Cease and desist all file sharing activity;
 - Remove the allegedly infringing material;
 - Contact the DMCA agent within 24 hours.
- If the user does not contact the DMCA agent within 24 hours, his or her Internet access will be suspended;
- DMCA agent notifies the sender of the complaint that the user has been notified to cease and desist.

Individuals using computers and networks at the College are required to comply with copyright laws as well as the College's policies and procedures. The College reserves the rights to limit, revoke, deny, or extend privileges and access to the institution's computing and network resources at its discretion.

Appendix 6

COPYRIGHT OFFICE MEMORANDUM ON DMCA ANTICIRCUMVENTION RULES

[Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works](#)

Appendix 7

SAMPLE DMCA WARNING AND NOTICE OF COPYRIGHT INFRINGEMENT

DMCA Warning and Notice of Copyright Infringement

The Digital Millennium Copyright Act (DMCA) Agent at Union College has been notified that you or someone using your account is downloading, publishing, or distributing copyrighted materials without permission of the copyright owner. Copyright owners constantly scan the Internet looking for such materials. If you have copyrighted files on your system that you did not purchase or that you do not have specific written permission from the copyright owner to download, you must remove them immediately and stop downloading such materials.; We strongly recommend that you also delete any file sharing software.; Examples of such programs are.; Kazaa, Edonkey, and DC++ . If a file-sharing program is not correctly configured, you could not only infringe on another's copyright, you could also unintentionally disclose your personal files to the world. Even if you purchased the copyrighted files or the copyright owner gave you written permission to download them, you must be sure you have blocked others' access unless the copyright owner has granted you specific written permission to share the files.; If you have shared copies of copyrighted materials without permission of the copyright owner, you must stop doing so immediately.; Copyright infringement is a violation of federal law and is against College rules. If we do not hear from you within 48 hours that you have complied with this request, we will terminate your Internet connection. The notice we received stated that you used College resources to download, publish, or distribute the following copyrighted materials on the Internet:

Host;; 000.000.000.00

Date: dd/mm/year

Copyrighted Works: [on file, DMCA Agent, Union College]

Failure to respond to this message could result in disciplinary or possibly even legal action. Copyright owners or their representatives have begun filing lawsuits naming individual students as defendants in copyright infringement actions. If you can prove that you own the copyright, are using it in a manner permitted by the copyright owner, or if there are other valid reasons why you believe that you have not infringed on someone else's copyright, please contact me directly. You should be familiar with institutional policies concerning the

acceptable use of Union College computing and network facilities and resources, found at

<http://its.union.edu/policies/policies.php>

General Information about the Digital Millennium Copyright Act may be found at

<http://www.loc.gov/copyright/legislation/dmca.pdf>

<http://www.gseis.ucla.edu/iclp/dmca1.htm>

<http://www.musicunited.org>

Please be advised that you can be held responsible for the activities for which your computer account is used; Future inappropriate usage may result in subsequent disciplinary action.

E. Y. Borkowski, DMCA Agent for Union College
Information Technology Services
Union College
Schenectady, NY 12308
518-388-6293