

Procedure No. 56.001

Policy on Use of Copyrighted Material

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Preface

Clarion University of Pennsylvania does not permit unauthorized or illegal copying or duplication in any form unless covered by fair use provisions of the Copyright Act of 1976 or proper permission from the owner of copyrighted material, including both written and illustrated matter, must be obtained before copies are made or material included in publications. Employees and students making or requesting unauthorized copies in violation of this policy assume liability for their actions.

Additional information concerning unauthorized duplication and copyright law is available at Carlson Library.

NOTE: The university prohibits the use of commercial cartoons, comic strips, works of art, drawings, and photographs on or in newsletters and other publications prepared for general distribution unless written permission has been obtained from copyright owners.

This policy covers contemporary works as described which are published routinely in newspapers, magazines and other publications.

For further information on what is permissible, please consult the material that follows.

These guidelines are provided to assist the university community in understanding and conforming to the legal constraints of the federal copyright law. The text of the law is contained in the statutes of the Ninety-fourth Congress (Public Law 94-533) and in any revised edition of the United States Code (Title 17).

What is a Copyright?

Copyright is a constitutionally conceived property right which is designed to promote the progress of science and art by securing for the author of informative and/or creative works the benefits of his or her original work for a specific period of time.

Copyright laws give the author/owner of original works exclusive rights to do any of the following:

1. Reproduce the copyrighted work
2. Prepare derivative works
3. Distribute copies by sale or other transfer of ownership or by rental, lease, or lending.
4. Perform or display the copyrighted work publicly in the cases of literary, musical, dramatic, or choreographic works; pantomimes; motion pictures and other audiovisual works; or works of art.

Copyright laws cover, among other things, literary works (including material from books, magazines and journals, and newspapers), sound recordings, computer programs, musical works (including any accompanying lyrics), dramatic works (including any accompanying music), audiovisual materials (including motion pictures, television programs, and slide programs), photographs and other pictorial works and graphics. Use of such materials may be governed by licenses and/or contracts in addition to the provisions afforded by the copyright laws. Although a specific media, for example, compact discs, may not be mentioned in the copyright law, it does not mean that they (or whatever supersedes them in the world of technology) are in any way exempt from the laws governing copyright. Copyright laws do not cover ideas, mathematical formulas, measuring devices, blank forms, works of the U.S. government [the law is unclear about how much copyright protection there is for local and state publications], and works in the public domain.

Copyright is violated whenever the intent of copying can be interpreted as avoiding purchase. However, educational institutions and especially faculty and libraries have received special consideration in Sections 107 and 108 of the copyright law.

Duration of Copyright

For works copyrighted prior to January 1, 1978, the copyright law retains the present term of copyright -for twenty-eight years from its first publication and/or registration. This term is renewable for a second period of protection for a term of forty-seven years. The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976 and December 31, 1977, inclusive, or for which renewal registration is made

between December 31, 1976 and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.

Works created after January 1, 1978, are protected under copyright laws for the lifetime of the author, plus an additional fifty years after the author's death. It is no longer necessary for individuals to formally indicate copyright on the work. Copyright protection under the common law will automatically attach to any work that is published by an individual or group.

Once a work is considered in the public domain, the copyright cannot be restored.

Principles of Fair Use

Within the copyright law exists the doctrine of fair use, which sets certain limitations on the exclusive rights of producers of copyrighted materials and allows a reasonable amount of reproduction of copyrighted works without the payment of royalty and copyright owner's permission.

The concept of fair use is presented as Section 107 (Limitations on Exclusive Rights) of the copyright law. This law provides that the controlled reproduction of copies of copyrighted materials for the purposes of teaching, criticism, commentary, reporting, scholarship, and research is not an infringement of copyright laws. Four general guidelines have been established to determine the limits of fair use.

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

NOTE: Copying for profit (e.g., selling copyrighted materials to students, without permission, for other than duplication costs) would not meet the purpose and character of use provisions of fair use and would likely constitute infringement of copyright.

Reproduction Service by the Printing and Duplicating Services, Publications, Library, and Instructional Materials Center

1. The Printing and Duplicating Services, Publications, Library and Instructional Materials Center will limit reproduction to these guidelines.

2. All work submitted in excess of these guidelines must be accompanied by documented permission from the copyright holder.

Application of Fair Use Principles

Audiovisual Materials

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

Audiovisual materials are not exclusively limited to films, videos, slides, and transparencies. Preassembled bulletin boards, learning packets, story books with recordings, compact discs, and possibly other material all fall under the category of audiovisual material and may be protected by current copyright laws.

Permitted Uses

Displays and performances of audiovisual works are permitted in nonprofit educational institutions if:

1. They are shown as part of the instructional program.
2. They are shown by students, instructors, or guest lecturers.
3. They are shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
4. They are shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.

5. They are shown only to students and educators.

6. They are shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Prohibited Uses

1. They must not be used for entertainment, recreation, or even for their cultural or intellectual value, but are unrelated to teaching activity.

2. They must not be transmitted by radio or television (either closed or open circuit) from an outside location.

3. They must not be shown in an auditorium or stadium before an audience not confined to students, such as a sporting event, graduation ceremony, or community lecture or arts series.

4. They must not involve an illegally acquired or duplicated copy of the work.

Classroom and Instructional Purposes

A single copy of a copyrighted work may be made by or for a teacher for the purpose of study, scholarly research, or use in teaching, as long as copying does not substitute for the purchasing of a work or is not used to create, replace, or substitute for anthologies, compilations, or collective works.

The following copies are permissible:

1. A chapter from a book

2. An article from a newspaper or a periodical

3. A short story, short essay, or poem, whether or not from a collective work.

4. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

Multiple copies of a copyrighted work may be made if the duplication does not exceed one copy per student and provided that:

1. The copying meets the test of "brevity":

a. In cases of 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.

b. Either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

c. In cases of illustrations, one per book or article.

d. In cases of special works (poetry and/or prose that combines language and illustrations, such as a children's book), the work may not be reproduced in its entirety; however, excerpts may be reproduced of no more than two pages totaling less than ten percent of the work.

2. The copying meets the test of "spontaneity":

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

b. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

3. The copying meets the "cumulative effect" test:

a. The material copied is for use in one course. (A course may include multiple sections.)

b. 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.

c. No more than nine instances of multiple copying during the period of one course term.

4. Each copy includes a notice of copyright on the first page of each copy.
5. The copying does not include workbooks, exercises, standardized tests, booklets, and answer sheets.

Computer Software

It is the policy of Clarion University that contractually protected and/or copyrighted computer software shall not be improperly copied, distributed, or used by its employees, students, or affiliated organizations. Copying does not just entail duplicating floppy disks; it also takes place when a program is transferred from a floppy onto a hard disk, sent over a local area network, or telecommunicated over long-distance lines. The impending emergence of global computer networks and the advent of an all-digital technology will, no doubt, have a major impact on future copyright policy.

The policy also recognizes that users, too, have rights, and that ultimately the ethical use of software involves a balance between the competing interests of users and vendors. The academic and administrative computing staffs will only install original software, not from copies, to ensure legal compliance. Where there is doubt, these units may require copy permission from the rights holder or evidence of a license to duplicate it.

Course Anthologies, Packets, or Custom Textbooks

The 1991 "Kinko's Case" (Basic Books Inc. v. Kinko's Graphics Corporation - Federal District Court in New York) confirmed that the copyright law requires that permissions be sought and royalties be paid to rights holders in connection with the creation and sale of anthologies. The court defined anthology as a "representative collection of selected literary pieces or passages or of selected pieces in any art form." Sometimes photocopy anthologies are also called "course packets," "readers," or "custom textbooks." Although it cannot guarantee a rights holder's affirmative response to all requests, the university recommends that the Academic Permissions Service of the Copyright Clearance Center (27 Congress Street, Salem, Mass. 01970) be contacted to avoid a time-consuming, labor-intensive process. There are registrations, royalty, and processing fees involved. If a client plans to have "custom textbooks" compiled, the client will request permission for producing copyrightable material through the National Association of College Stores' Copyright Permissions Services and provide documentation of said approval to the printer.

Home Use Video

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

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

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

Interlibrary Loans

1. The Interlibrary Loan Section of the University Library may not submit, during a 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.

2. No more than five requests for copies of excerpts of any given work may be made during a calendar year (January 1 to December 31).

3. The library must state that its requests comply with the Copyright Act and must retain request records for a three year period.

4. Copying should not be done to substitute for a subscription to, or purchase of, a periodical title.

5. All copies made by the Interlibrary Loan Section must bear the following copyright notice:

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

This notice must be stamped on the first page of the copied item.

6. Interlibrary loan order forms shall include a warning of copyright notice.

Library Reserve Materials

1. The Library's Reserve Section may place one photocopy of a periodical article per issue or one chapter from a book on faculty reserve.

2. Library Reserve may shelve additional copies provided by faculty so long as the faculty member provides adequate reassurance in writing that the copies conform to the copyright laws or that written permission from the copyright holder has been obtained.

3. Phono records, audiocassettes, videocassettes, and other media titles may be placed on reserve in the Instructional Materials Center if they are legal copies with appropriate markings and identification.

4. Copies of copyrighted materials may not be retained on reserve for more than one semester for any faculty member unless the library receives assurance from the faculty member that permission to reproduce and distribute copies in this fashion has been granted by the copyright holder and that said reproduction is in accordance with all copyright laws.

5. The following notice of copyright must be placed on all photocopied materials housed by the library: "Notice: this material may be protected by copyright law (Title 17 U.S. Code)."

6. "Consumable works" such as workbooks, exercises, standardized tests, booklets, and answer sheets may not be photocopied, nor will they be accepted, for placement on reserve shelves.

7. No books or materials obtained through interlibrary loan shall be placed on reserve.

Library Reproductions

Single replacement copies of copyrighted works may be made to acquire an out-of-print title that cannot be obtained through normal channels. Subsections (B) and (C) of Section 108 of the copyright law have been interpreted "to permit libraries (not other

organizations) to make single copies of protected works for preservation purposes. Copies of unpublished works may be deposited in another library [for researcher use, for example], but the copy of the published work should probably be retained in the originating library." The copying of an entire published work is permitted only for replacement of a copy that is damaged, deteriorating, lost, or stolen. It appears that Section 108 will not allow direct conversion and storage of documents in any machine-readable format.

Music and Sound Recordings

Prohibitions in the copying of music are essentially the same as those for printed materials. Sound recordings consist of all audible recordings and are not limited only to those of music. Guidelines include:

1. A single copy of a copyrighted sound recording may be made from sound recordings owned by the university or an individual teacher for the purpose of constructing aural exercises or examination. The copy is to be retained by the university or individual teacher.
2. A single copy of recordings of performance by students may be made for the purpose of evaluation and may be retained by the teacher or department.
3. Printed copies of music 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 added.
4. University-owned recordings may not be transmitted by any unlicensed broadcast means.
5. Copyrighted music may be copied if it is emergency copying to replace purchased copies which are not available for any imminent performance. Purchased replacement copies must be substituted in due course.
6. Single copies of an entire work may be made for purposes other than performance, provided the copyright holder has confirmed that the work is out of print or is available only in a larger work.

7. Multiple copies of excerpts may be duplicated for classroom purposes if the excerpts in no case comprise an entire performance unit and in no case exceed ten percent of the entire work, and if not more than one copy per student is made.

Off-Air Recording of Television Broadcasts

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

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

1. A unit may tape a program and retain it for forty-five calendar days provided that:

a. Such recordings are used only once for teaching and repeated only once in the first ten class days following taping.

b. After ten class days, the tape is used in the classroom only for teacher evaluation, i.e., only to decide to include the program in a curriculum after receiving permission from the copyright owner.

c. Videotapes must be erased or destroyed after the forty-five day period unless a legal copy is being obtained.

d. Taping of broadcast programming is done only in response to a request from an individual teacher and not in anticipation of such a request.

e. All recordings include the copyright notice of the broadcast.

f. Additional copies reproduced to meet legitimate teaching needs are subject to all provisions governing the original. Recordings need not be copied in their entirety, but the original content may not be altered, combined, or merged into anthologies or compilations.

2. No editing will be done when copying is performed by the Instructional Materials Center. Advertisements and other "extras" will appear as broadcast.

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

Photocopying Machines

All photocopiers must have the following notice posted on the copying machine or on a wall above the copier:

Clarion University of Pennsylvania does not permit unauthorized or illegal copying or duplication in any form. Proper permission from the owner of copyrighted material, including both written and illustrated matter, must be obtained before copies are made or material is included in publications, unless covered by fair use provisions of the Copyright Act of 1976. Employees and students making or requesting unauthorized copies in violation of this policy assume liability for their actions.

The copyright law of the United States (Title 17, U.S. code) governs the making of photocopies or other reproductions of copyrighted materials. The doctrine of the fair use (section 107) permits certain limited copying of copyrighted works for educational or research purposes without the permission of the copyright owner. This fair use is a limited exception, which, if exceeded, can subject the person making the unauthorized copies and the university to severe penalties.

It is the responsibility of the individual requesting the copies to make sure that copying does not violate fair use practices.

Public Performance Rights for Motion Pictures and Videocassettes

Clarion University has signed license agreements. Questions should be addressed to Student Association Business Manager, Gemmell Student Complex, or appropriate department chair or director.

Public Performance Rights for Music

Clarion University has performance rights agreements with ASCAP and BMI in certain situations. Any questions should be addressed to the Student Association Business Manager, Gemmell Student Complex, or appropriate department chair or director.

Unpublished Works

All unpublished works, including theses and dissertations, and works of art are under protection of copyright from the moment they are created. Accordingly, all unpublished works are subject to the same copyright regulations as books and periodicals. Various unpublished titles owned by the university may, however, be photocopied or microfilmed by the library in order to guarantee their security and preservation.

Appendix A

Definitions

University community: All full-time and part-time university employees, including faculty, students, and staff, as well as the employees of affiliated organizations of the university.

Affiliated organizations: Those organizations with an official recognized association with Clarion University, such as the Clarion University Foundation, Alumni Association, and other recognized organizations and programs as defined by the university.

Supervisor: One who is responsible for another, such as faculty with regard to students, deans with regard to faculty, and managers or supervisors with regard to staff employees.

Faculty/faculty member: Person or people who teach a class.

Library/department: Any unit of the university library.

Employees/staff: Anyone on the university payroll.

Public performances: Any performance or display at a place open to the public, as well as those campus groups and organizations which might make use of copyrighted materials, e.g., use of video tapes by groups in dormitories.

Appendix B Page

Guidelines for Seeking Permission from Copyright Holders

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

Once the copyright holder has been determined, the following information must accompany any request for permission to duplicate copyrighted materials (see samples on pp. 16-17):

1. Title, author, and/or editor, year, edition and format of material to be duplicated.
2. Page numbers, chapters, amount of pages, and a photocopy of material to be duplicated.
3. Number of copies
4. Use of the copies (teaching, conference, research)
5. Whether or not the material is to be sold
6. Type of reproduction

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

Copyright Clearance Center
27 Congress Street
Salem, Massachusetts 01970

Appendix C Sample Duplication Request Forms

Sample Request for Permission

Audio Visual Media

Date:

Permissions Department

ABZ Company

451 Main Street

Sometown, PA 00001

Dear Sir or Madam:

I would like permission to duplicate thirteen frames from one of your filmstrips. These frames, showing tribal hunting costumes, will be combined for presentation with additional slides from my personal collection.

Title: INDIANS OF CENTRAL PENNSYLVANIA

Collaborator: Joseph Joseph

Material to be duplicated:

Frames seven through nineteen

Reproduction type: color slides

Use: The slides will be used to supplement my lecture in PA History 102.

A self-addressed envelope and a copy of this letter for your files are enclosed for your convenience.

Please let me know what conditions, if any, apply to this use.

Sincerely,

John Doe

Associate Professor

History Department

Permission granted: _____

signature date

Conditions if any:

Sample Request for Permission

Print Media

Date:

Permissions Department

Library Book Company

301 Philadelphia Street

Sometown, PA 00001

Dear Sir or Madam:

I would like permission to duplicate the following for classroom use:

Title: RECRUITING ACADEMIC FACULTY

Second edition

Copyright: Library Book Co., 1989

Author: Eric McMillan and Diane Smith

Material to be duplicated: Pages 23, 24, 25, 26, and 57 (photocopies enclosed), all in chapter one

Number of copies: 50 each semester - total 150 copies

Use: Photocopies will be distributed free to class students.

A self-addressed envelope and a copy of this letter for your files are enclosed for your convenience.

Sincerely,

Mildred Jones

Office of Academic VP

Permission granted _____

signature date

Conditions, if any:

Appendix D

Sample Form

Authorization to Video/Audio Tape

I, _____ authorize Clarion University to record by audio or video tape my presentation as described:

Topic:

Time:

Place:

The recording may be used by Clarion University for educational purposes either in classrooms or for research. It may be made available through an individual teacher/researcher or through the university library.

I authorize the use of my name and program title for the identification of such program.

The university use shall extend to:_____.

Signature_____

Date_____

Appendix E

Copyright Questions Contact People: Ext.

Audio-visual, videotaping, off-air recording rights,

general questions Allan Larson 2489

Computer software Director of Computing 2280

Services

General library questions Director of Libraries 2343

Printing and duplicating applications Printing Manager 2679

Graphics Director of Publications 1889