

Revised August, 2013

**Copyright Guidelines  
Indiana University of Pennsylvania**

**Reasons for these Guidelines:**

- Guidelines for copyright protection and use are recommended from recent requirements for compliance with the Digital Millennium Copyright Act (DMCA) of 1998 see - <http://www.loc.gov/copyright/legislation/dmca.pdf> and passage of the Technology, Education and Copyright Harmonization (TEACH) Act – see <http://www.ala.org/advocacy/copyright/teachact> with specific requirements to "government body or an accredited nonprofit educational institution."
- The Pennsylvania State System of Higher Education (PASSHE) launched an initiative last year for all its institutions of higher education, for the creation and adoption of individual copyright guidelines and/or policies in compliance with the federal copyright laws.

**Purpose of these Guidelines:**

- These Guidelines are required by provisions of current laws.
- They are primarily meant to be *educational* in nature, so that students, faculty and administrators are familiar with current copyright law in the academic environment.
- They serve as a starting point for the individual departments to customize their policies to meet their individual needs.
- They are based upon "best practices" guidelines from other universities.
- They *are not* a definitive statement of all issues related to copyright.
- They *do not* intend to alter intellectual property language found in current collective bargaining agreements.
- They *do not* attempt to address broader, global concerns to the risk of losing or submitting to controls of access, increased costs, licensing, limits in variety of sources from different media, etc.
- They *do not* provide a *guarantee* against infringement litigation, but give guidance towards a good faith effort for compliance with the law.

The Digital Millennium Copyright Act (DMCA) and the Technology, Education and Copyright Harmonization (TEACH) acts provide qualifies educational entities with some permissible uses otherwise prohibited by law, in order for the educational institutions and service providers to benefit from such requirements. These are the requirements that must be met:

**Requirements in order to use Digital Millennium Copyright Act (DMCA) Provisions:**

- Ensure appropriate campus expertise and resources to deal with copyright issues
- Determine who will be the campus agent to receive notifications of copyright infringement from the Copyright Office
- Register the campus agent with the Copyright Office
- Develop or update campus guidelines and procedures on copyright
- Post the campus guidelines online
- Educate the community about current laws and promote compliance

Service providers must file with the Copyright Office a designation of agent to receive notification of claimed infringement. They must also make available online a copy of the updated service provider copyright policy.

**Requirements in order to use TEACH Act Provisions:**

- The institution must be an accredited, non-profit educational institution.
- There is a requirement that qualifying institutions have copyright policies in place, provide information and education about copyright and provide notice that materials may be protected by copyright.
- Application of reasonable technological measures that prevent distance learners from retaining copyright materials beyond class applications and prevent unauthorized distribution is required.
- Performance and display of copyrighted materials has some requirements attached to it including:
  - Use must be a regular part of the class activities and directly related to class content.
    - Instructor is to be the one to make, direct or supervise the performance or display, and
    - The use must be technologically limited to only students enrolled in the class.
- Digital copies of analog works needed to perform and display works in a digital environment can only be kept by the institution and used only for authorized activities described in Section 110. Exclusions include: materials which are specifically developed and marketed for the distance learning market, illegal copies, materials usually purchased by students (i.e. course packs, textbooks, etc..)
- The duties and responsibilities placed upon institutions, IT officials, and instructors are described.

Information has been retrieved from materials on copyright including: the University of Texas Copyright Crash Course (<http://www.utsystem.edu/ogc/intellectualproperty/l-intro.htm>) and Cornell University Copyright Information Center <http://www.copyright.cornell.edu/policies/>.

One of the best copyright guidelines for educators is the pamphlet *Know Your Copy Rights: What You Can and Cannot Do* published by the Association of Research Libraries (ARL): <http://www.knowyourcopyrights.org/resourcesfac/kycrbrochure.shtml>

In addition to these sources, professional literature, legal resources from statutes, acts and cases will be monitored regularly by the campus Copyright Committee to identify new trends in the area of copyright. **This is a “living document” that will be revised as copyright laws evolve in the future. Specific IUP departmental guidelines and resources may be found at the end of this document.**

**Copyright Basics:** (<http://www.copyright.gov/circs/circ1.pdf> )

What is copyright?

Copyright is protection given by law to the owners of "original works of authorship." The author immediately becomes the owner as soon as the work is in a fixed or tangible form. If an author creates a “work-for-hire,” then the *employer* owns the copyright. Collective works have a separate copyright

from the individual works contained in it. Copyright owners have exclusive rights, listed in Title 17 U. S. C and Sec. 106 of the copyright law, including to:

- make copies
- distribute copies
- publish
- publicly display
- publicly perform
- make derivative works

These should be understood as a *bundle of rights*. ***Each of these rights is separate and distinct***. Each right may be sold or licensed separately. Except for a few special purposes explained in the law, *it is illegal for anyone to use copyrighted property without the owner's permission*.

#### What materials are subject to copyright?

Sec. 102 of the law tells that literary, musical, dramatic, and choreographic works are copyrightable, as are works of art, photography, sculpture and architecture. Audiovisual works (movies, videotapes, etc.) and sound recordings are also included. Computer software is protected, as are any digital manifestations of the materials listed above. Boat hull design was added with the DMCA.

Both *published* and *unpublished* works are protected. There is no longer any requirement to display copyright notice, or register materials with the copyright office. *All "original works of authorship" are protected automatically, with or without a notice, "from the moment of creation."* Registration and adding a notice of copyright are highly recommended since this would make a stronger case in Federal Court.

Since an element of creative expression and original authorship is required for copyright to apply, Sec. 102 also lists works that are *not copyrightable*. Examples include titles, names, short phrases, slogans, etc. (though some of these may be protected through trade mark ™); ideas, procedures, methods, systems, etc. (though some of these may be protected by patent), and works "consisting entirely of common property with no original authorship," such as calendars, directories, tape measures and rules, height and weight charts, phone books, etc. Sec. 105 tells that Federal Documents claim no copyright and are "in public domain," but many State Documents do claim copyright.

A work is said to be "in public domain" when the author claims no copyright ("dedicated to the public"), and when copyright has expired. Such works can be used without permission.

#### What is the duration of a copyright?

Under S. 505 Copyright Term Extension Act (TEA) of 1998, duration has been extended to the life of the author, plus 70 years, or 95 years for a work of "corporate authorship." Works already under copyright will be protected for an additional 20 years from the date copyright was originally due to expire.

Because the duration of many older copyrights has been extended, it is possible that anything bearing a copyright date going back as far as seventy-five years could still be protected. The only safe course for a prospective user is to assume that such an item is protected, unless he has reliable evidence that the

copyright has expired. The fact that a publication is out of print does not nullify its copyright or justify its use without permission. The following chart show when various materials pass into public domain:

<http://www.copyright.cornell.edu/resources/publicdomain.cfm>

**Fair Use:** (<http://www.copyright.gov/fls/fl102.pdf>)

The law allows limited use of copyrighted works without permission in some situations. Section 107 describes usage without permission for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research. In determining whether such a use is permissible, four factors are to be considered:

**a. Purpose:** The purpose of the use, including whether such use is noncommercial or is for nonprofit educational purposes.

**b. Nature:** The nature of the copyrighted work; whether it is “factual” or “highly creative,” such as plays poetry and music.

**c. Amount:** Whether the intended use is an insignificant part of the copyrighted work as a whole.

**d. Effect:** Whether there is an adverse effect on the market for, or value of the copyrighted work.

The exact boundaries of fair use have never been legally established. As a copyright attorney once said, “*Fair use was meant to be litigated.*” When fair use is litigated, the courts use the four factors above to determine if a use is “fair.” All four of the factors are taken into consideration, on a type of sliding scale. Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner - in favor of having to obtain permission. The uses in the middle, if they apply, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

#### **Factor 1: What is the character of the use?**

- Nonprofit
- Educational
- Personal research
- Criticism
- Commentary
- News reporting
- Parody
- Other "transformative" uses
- Commercial
- Profiting from use
- Entertainment
- Bad faith endeavor
- Not giving credit to original author

**Factor 2: What is the nature of the work to be used?**

- Fact
- Published
- Important to educational objectives
- A mixture of fact and imaginative
- Imaginative
- Unpublished
- “Highly creative” i.e. Music, poetry, art, ...
- Is consumable, as for example “workbooks”

**Factor 3: How much of the work will you use?**

- Small amount
- Not central or significant to the work as a whole
- Amount is appropriate for the educational objective
- More than a small amount
- Portion used is central to the work, or the “heart of the work”

**Factor 4: What effect would it have on the market for the original or for permissions?**

- No loss of potential income
- User owns a “legal copy” of the work
- Lack of a licensing mechanism
- Access only to members of the class
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable, or could not be contacted with a “good faith” effort (see “orphan work” below)
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established market
- Reasonably available licensing mechanism
- Affordable permission available
- Numerous copies made
- Repeated or long term use (called “cumulative effect”)
- Unrestricted access on the web, or other public forum

Remember this essential point: It is all right to do anything you want to do with copyrighted materials *provided that you first get the owner's permission*. When in doubt, ask permission, but allow at least six to eight weeks for a response. The fact that a publication is out of print or that a copyright owner is difficult to locate does not justify infringement. Research and good old-fashioned detective work may be necessary. For a modest fee, the Copyright Office in Washington, D.C. will conduct a search of their records, but allow a few weeks for response.

Orphan Work: If a copyright owner can not be identified, or could not be contacted with a good faith effort, the work may be considered an "orphan work." Legislation is pending that would limit the exposure of good faith users of orphaned works, but for the time being these works still have full copyright protection and can only be used following the principles of fair use.

The amount of a work used should be no greater than what is needed for the particular educational purpose.

Be aware that a very small portion may be determined to embody a "substantiality" or "heart the work." This is especially true of "highly creative works," such as poetry and music. Permission is necessary before using any complete short story, poem, or song. Permission may be necessary for *any* copyrighted work, if the portion used could be considered the "heart of the work."

An important condition in exercising fair use is that the pertinent copyright notice must be reproduced or displayed on each copy.

Access to the portion of a course Web site containing copyrighted materials should be limited to students enrolled in the course or other individuals requiring access to the course materials for purposes of conducting the course. This can be achieved through the use of passwords or other technological means. Student access to copyrighted content should terminate when the student has completed the course.

**Your options should a desired use exceed "fair use":**

- Determine if IUP has already paid for a licensed use of the material. The IUP Libraries has paid for subscriptions to many electronic journals and other databases, such as music listening databases, that the entire campus community can access online and the license agreements permit the use of these materials in courses.
- Provide a link directly to the material. Linking does not involve the creation of additional copies and therefore cannot constitute copyright infringement. Much material is available for free from legitimate Web sites such as open archives or open access journals or available under a Creative Commons <http://creativecommons.org/about/licenses/meet-the-licenses> or similar license.
- Get written permission from the copyright holder.
- Pay for a license through the Copyright Clearance Center.
- Incorporate materials into a course pack. The copy vendor may obtain necessary permissions and incorporate any fees into the price of the course pack.
- If costs are prohibitive, seek out substitute materials.

**Guidelines for Photocopying Books and Periodicals for Classroom use in Not-For-Profit Educational Institutions**

Soon after the Copyright Act of 1976 (17 USC §§ 101-810) was passed, meetings of an Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, the Authors League of America, Inc., and the Association of American Publishers created the following guidelines. While these guidelines do not have the force of law, the Committee believed the guidelines were a reasonable interpretation of the minimum standards of fair use.

The parties agreed that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying may not be permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Law. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Please refer to Circular 21 *Reproduction of Copyrighted Works by Educators and Librarians* <http://www.copyright.gov/circs/circ21.pdf> which gives a detailed description of the history, background and logic of these guidelines and from which all the details below were taken:

**I. Single Copying for Teachers**

A single copy may be made of any of the following or any part thereof by or for any faculty or staff member at his or her individual request:

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

**II. Multiple Copies for Classroom Use:**

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

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

**Definitions** (from Library of Congress *Circular 21*, p.6-8)

**Brevity**

- A. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- B. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) 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.

[Each of the numerical limits stated in "A" and "B" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- C. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- D. "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

**Spontaneity**

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

**Cumulative Effect**

- A. The copying of the material is for only one course in the school in which the copies are made.
- B. Not more than one short poem, article, story, essay or two excerpts may be copied from neither the same author, nor more than three from the same collective work or periodical volume during one class term.
- C. There shall not be more than nine instances of such multiple copying for one course during one class term.

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

**III. Prohibitions as to I and II above**

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying may not be used to create or to replace or substitute for anthologies, compilations or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts there from are accumulated or are reproduced and used separately.

- B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
  - a. substitute for the purchase of books, publisher's reprints or periodicals;
  - b. be directed by higher authority; or
  - c. Be repeated with respect to the same item by the same teacher from term to term.
- D. No charge may be made to the student beyond the actual cost of the photocopying.

### **Guidelines for Educational Uses of Music**

- A. Permissible Uses
  - B. 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.
1. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section<sup>1</sup>, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.
  2. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
  3. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
  4. A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

### **B Prohibitions**

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A (1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

**CONFU: The Conference on Fair Use**

In the 1990s, there was an effort to negotiate guidelines for the fair use of electronic materials in a variety of nonprofit educational contexts. Anyone who wished to participate was invited to do so and a large group began to negotiate in September 1994. The large group identified five areas of educational use for consideration by smaller working groups: Distance Learning, Multimedia, Electronic Reserves, Interlibrary Loan, Image Collections and Software. Ninety-three organizations representing for-profit and nonprofit publishers, the software industry, government agencies, scholars and scholarly societies, authors, artists, photographers and musicians, the movie industry, public television, licensing collectives, libraries, museums, universities and colleges negotiated nearly three years, but reached no binding agreements. The industry groups felt the guidelines were too liberal, while the library and educational groups felt the guidelines were too restrictive. Thus the CONFU Guidelines offer no sure safe harbor from infringement lawsuits, and neither do they mark the exact limits of fair use, since only the courts can determine that through litigation.

**That said, the guidelines that were negotiated are still useful *as a place to begin*. They may be used to argue a good faith effort to comply with the spirit of fair use, and have also been used by many organizations as an example of best practices in the user community.**

Please refer to the Final Report to the commissioner on the conclusion of the Conference on Fair Use (November 1998) <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf> for a detailed description of the history, background and logic of these guidelines.

The following sections summarize some of the CONFU guidelines and give updated information for subsequent laws and guidelines.

**Performance and Display in Distance learning:**

The CONFU Distance Learning Guidelines only tackled fair use to perform and display others' works in two contexts:

- Live interactive distance learning classes
- Delayed transmission of faculty instruction.

*They did not cover fair use of (performance of) others' works in online course materials.*

Section 110 "Exemption of certain performances and displays" of the Copyright Law gives educators rights to perform and display copyrighted material in the classroom. The TEACH (Technology, Education and Copyright Harmonization) Act of 2002, broadened Section 110 for distance education with specific limitations. Performances and displays in digital distance education should adhere to the following principles:

**The performance or display must be:**

1. A regular part of systematic mediated instructional activity.

2. Made by, at the direction of, or under the supervision of an instructor.
3. Directly related and of material assistance to the teaching content.
4. For and technologically limited to students enrolled in the class.
5. From a lawfully obtained copy (one that is purchased by the IUP Libraries or the instructor).  
The Libraries will make a good faith effort to purchase commercially available copies of all requested items.

**Expanded rights include:**

1. Performances (partial or entire) of all non-dramatic literary or musical works. Such works would include the display or performances of poetry or short-story reading; all music other than opera, music videos and musicals.
2. Reasonable and limited portions of any dramatic musical works (including choreography, pantomimes, plays, radio and television scripts, movies, ballet, opera, music videos and musicals).
3. Performances and displays of any work in amounts comparable to typical face-to-face displays.
4. Performances and displays of materials with appropriate permissions from the copyright holder.

**Prohibitions:**

1. Materials specifically produced or marketed for classroom use or for digital distance education (i.e. Materials currently available electronically).
2. A performance or display that is given by means of a copy not lawfully made or acquired, or that the Libraries or instructor knows or has reason to believe was not lawfully made or acquired.
3. Media that the students are normally required to purchase for the course. Examples may include: films or recordings purchased in conjunction with required textbooks and recorded anthologies.
4. Materials without appropriate permission if the nature, scope, or extent of the copying is judged by IUP Libraries to exceed the reasonable limits of "fair use" under copyright.

**Multimedia:**

Multimedia was introduced after the latest revision of the copyright law. In 1997 the Conference on Fair Use (CONFU) released the Fair Use Guidelines for Educational Multimedia which was endorsed by the U.S. Copyright Office.

**Permitted**

- Students: Students may perform and display their own educational multimedia works for a course they are taking. Students may include their multimedia works in their portfolios. Students may keep their work indefinitely.

- **Teachers:** Teachers may use and display their own education multimedia projects for face-to-face instruction, their own portfolios or academic conferences or in-services. Teachers may keep a work for only two years. Teachers may make only two copies of the multimedia works.

**Limitations:**

- Motion media (film, video, television) – up to 10% or three minutes, whichever is less, of an individual program.
- Text (prose, poetry, drama) – up to 10% or 1000 words, whichever is less, of a novel, story, play, or long poem. Short poems less than 250 words may be used in their entirety. Only three poems by one poet or five poems by different poets from an anthology may be used. For poems longer than 250 words, only three excerpts from one poet or five from works by different poets in an anthology.
- Music, lyrics, and music video – up to 10% but not more than 30 seconds from a single work (or combined from separate extracts of a work).
- Illustrations, cartoons and photographs – no more than 5 images from a single artist or photographer. No more than 10% or 5 images from a single collective work.
- Numerical data sets (computer databases or spreadsheets) – up to 10% or 2,500 fields or cells whichever is less.

**Other requirements** - All multimedia works, by either teacher or student, must include a statement that the work contains copyrighted materials under the Fair Use exemption of U.S. Copyright Law.

Permission must be sought for all copyrighted works used in their multimedia projects if they are used for non-educational or commercial purposes.

**IUP Specific Resources**

## Reserve / EReserve Submission Guidelines

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship, or research. If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of fair use, that user may be liable for copyright infringement.

**Fair Use:** Please apply these four factors when preparing an item for Reserve/EReserve.

- **Purpose:** Fair use is more likely to apply when the work is used for a nonprofit, educational purpose such as teaching, research, scholarship criticism, or comment. The use must also be transformative or have a productive use. In other words, the work is used to be commented on, criticized, remade as a parody, or repurposed so that the main idea behind it can be more easily

identified. In addition, the work must have some type of restricted access so that only a specific group of people, such as students, are able to access it.

- **Nature:** In order for a work to fully favor fair use, it must be a published work that is factual, or nonfiction, and be important to the course objectives. Consumable works, such as standardized tests and workbooks, will **never** qualify for fair use.
- **Amount:** In order for fair use to fully apply, it must be a small quantity of the work that is no more than necessary for its educational purpose, and the portion may not be the central part, or “heart,” of the work which would weigh against fair use.
- **Effect:** The effect of the work refers to the effect the use of the work will have on the potential market. In other words, will the use of the work cause an economic loss for the copyright holder? In order for a work to fully favor fair use, it must have been lawfully acquired, have no significant effect on the potential market, be no longer in print, have no similar product on the market by the same copyright holder, and there can be only one or few copies made of the work. Likewise, the work may **not** be used repeatedly or for long-term circumstances, be made publicly available on the Internet, have a reasonably available licensing mechanism to get permission for the work, or have potential to replace the sale of the copyrighted work.

**Limit Reserve/EReserve to:**

- One chapter from a book (cannot exceed 10% of the book)
- One article from any given journal issue
- An article from a newspaper
- Supplemental - small part of materials required for the course (not to take place of a course packet).
- Original materials must be owned by the library, faculty member, or department.
- PALCI books, ILL books, or books from any other institution cannot be used for Reserve/EReserve

**Include on Reserve/EReserve Forms:**

Full citations when submitting forms

**Limited access:**

- Items will be password protected for students enrolled in the specific class. Access will be terminated at the end of the designated class term (not to exceed two consecutive semesters).

**Things to know:**

- Under fair use an item can be used two consecutive semesters then it is no longer fair to use and permission from the publisher needs to be obtained to continue usage.
- The same article or chapter cannot be used for multiple courses taught by the same professor; unless permission is obtained.

- The Internet is not the public domain. There are both copyrighted and un-copyrighted materials available. Assume a work is copyrighted. (Links to the appropriate URL's will be used in this case)
- The same copyright protections exist for the author of a work regardless of whether the work is in a database, CD-ROM, or on the internet.
- Works of the United States Government are not copyrightable, but works created by State or Local Governments may be protected.

### Permission

- If permission is granted for usage of an item, we will need a copy of the letter or email for our files. The usage time frame will be followed as per the publisher's determination.

**In order to make our EReserve processing as efficient as possible and to provide the best quality material for the students, we ask that faculty follow three general rules when making copies to be scanned:**

1. Submit first generation 8 ½ x 11 copies.
  2. Limit underlining and highlighting (yellow is the only color that is scannable).
  3. Keep pictures to a minimum along with print with grey shading in the background.
- Remember the original must have been purchased by you, the library, or your department.
  - Copies are always returned to your departmental secretary after scanning.

**Copyright law applies to materials found on the internet.**

**Fair use guidelines are applied to materials in traditional reserve just as they are in electronic reserve.**

Referenced sites:

<http://www.umuc.edu/library/copy.shtml>

<http://www.law.cornell.edu/uscode/17/107.shtml>

<http://www.utsystem.edu/ogc>

### Interlibrary Loan

The library may be either a requestor or responder in the interlibrary loan context ("IL"). As requestor, we are responsible for compliance with copyright law and, where applicable, the CONTU Guidelines. As responder, we are only responsible to ask whether the requestor has so complied. Further, the CONTU Guidelines only apply to certain materials (articles from periodicals published fewer than five (5) years

before the date of the request and small parts of other works) and do not define aggregate quantities of copying that would substitute for subscriptions to materials that are older than five (5) years or whole works under Section 108(e).

**a. Requesting a copy of an entire book.**

As requesting party, the library must comply with Sections 108(e) & (g):

- Determine that a copy cannot be obtained at a fair price;
- The copy must become the property of the patron;
- The library should have no notice that the copy will be used for a purpose other than private study, scholarship or research;
- The library should have both a display and order form "[Warning of Copyright.](#)"
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material;
- Since the CONTU Guidelines do not apply to Section 108(e) materials, the library must make its request with a representation that it has complied with copyright law.

**b. Requesting a copy of an entire journal issue.**

As requesting party, the library must comply with Sections 108(e) & (g) and the **CONTU Guidelines**:

- Determine that a copy cannot be obtained at a fair price;
- The copy must become the property of the patron;
- The library should have no notice that the copy will be used for a purpose other than private study, scholarship or research;
- The library should have both a display and order form "[Warning of Copyright.](#)"
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material;
- Since the CONTU Guidelines apply to periodicals, the library must make its request with a representation that it has complied with copyright law and the Guidelines;
- The library will pay royalties on any copy that exceeds the "suggestion of five;"
- The library will maintain its records of the request for three years.

**c. Requesting a copy of an article from a journal issue or a small part of another work.**

As requesting party, the library must comply with Sections 108(d) & (g) and the **CONTU Guidelines**:

- The copy must become the property of the patron;
- The library should have no notice that the copy will be used for a purpose other than private study, scholarship or research;
- The library should have both a display and order form "[Warning of Copyright.](#)"
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material;

- Since the CONTU Guidelines apply to periodicals and small parts of other works, the library must make its request with a representation that it has complied with copyright law and the Guidelines;
- The library will pay royalties on any copy of a periodical article that exceeds the "suggestion of five;"
- The library will maintain its records of the request for three years.

**d. Responding to a request for a copy of an entire book.**

Most observers believe that the supplying library in an IL transaction does not have responsibility for compliance with copyright law. Further, where the request is for an entire book and not for a part of a periodical or other work covered under Section 108(d), the supplying library has no responsibility under the CONTU Guidelines for requiring the statement of compliance with the Guidelines.

It nevertheless appears to be standard practice to require a statement of compliance with copyright law from the requesting library. Asking for and receiving assurance that the requesting library has complied with copyright law may have the effect of providing the supplying library with some "insurance" against the possibility that the supplying library could somehow be held responsible for engaging in related or concerted copying. Section 108(g) allows libraries to copy in accordance with the provisions of Section 108 so long as the library has no "awareness" or "substantial reason to believe" that it might be engaging in related or concerted reproduction or distribution of multiple copies of the same material. Courts have on occasion held that persons are responsible for "knowing" that which a reasonable inquiry might have revealed. If such an interpretation were followed in this context, a library that asks for and receives an assurance that the requesting library has complied with copyright law would be better able to say that it had no awareness than a library that did not ask.

**e. Responding to a request for a copy of one or more articles from a journal issue or a small part of a book.**

As responding party, the library will not have responsibility for compliance with copyright law, but should nevertheless request a statement of such compliance from the requesting library, as explained above. Further, a request for articles or small parts of other works is covered by the CONTU Guidelines so the library should require a statement of compliance with the Guidelines as well.

**Attachment:**

[CONTU \(National Commission on New Technological Uses of Copyright Works\)](#)

Source: Final Report of the National Commission on New

Technological Uses of Copyrighted Works, July 31, 1978,  
Library of Congress, Washington, DC, 1979, pages 54-55.

### **CONTU Guidelines on Photocopying under Interlibrary Loan Arrangements**

The CONTU guidelines were developed to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law. In the spring of 1976 there was realistic expectation that a new copyright law, under consideration for nearly twenty years, would be enacted during that session of Congress. It had become apparent that the House subcommittee was giving serious consideration to modifying the language concerning "systematic reproduction" by libraries in Section 108(g)(2) of the Senate-passed bill to permit photocopying under interlibrary arrangements, unless such arrangements resulted in the borrowing libraries obtaining "such aggregate quantities as to substitute for a subscription to or purchase of" copyrighted works.

The Commission discussed this proposed amendment to the Senate bill at its meeting on April 2, 1976. Pursuant to a request made at that meeting by the Register of Copyrights, serving in her ex officio role, the Commission agreed that it might aid the House and Senate subcommittees by offering its good offices in bringing the principal parties together to see whether agreement could be reached on a definition of "such aggregate quantities." This offer was accepted by the House and Senate subcommittees and the interested parties, and much of the summer of 1976 was spent by the Commission in working with the parties to secure agreement on "guidelines" interpreting what was to become the proviso in Section 108(g)(2) relating to "systematic reproduction" by libraries. The pertinent parts of that section, with the proviso added by the House emphasized, follow:

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee...

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecord of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

Before enactment of the new copyright law, the principal library, publisher, and author organizations agreed to the following detailed guidelines defining what "aggregate quantities" would constitute the "systematic reproduction" that would exceed the statutory limitations on a library's photocopying activities.

## **Photocopying-Interlibrary Arrangements**

### **Introduction**

Subsection 108(g) (2) of the bill deals, among other things, with limits on interlibrary arrangements for photocopying. It prohibits systematic photocopying of copyrighted materials but permits interlibrary arrangements "that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work."

The National Commission on New Technological Uses of Copyrighted Works offered its good offices to the House and Senate subcommittees in bringing the interested parties together to see if agreement could be reached on what a realistic definition would be of "such aggregate quantities." The Commission consulted with the parties and suggested the interpretation which follows, on which there has been substantial agreement by the principal library, publisher, and author organizations. The Commission considers the guidelines which follow to be a workable and fair interpretation of the intent of the proviso portion of subsection 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals--those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

### **Guidelines for the Proviso of Subsection 108(g)(2)**

1. As used in the proviso of subsection 108(g)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do

not define the meaning, with respect to such a request, of "...such aggregate quantities as to substitute for a subscription to [such periodical]."

(b) With respect to any other material described in subsection 108(d), including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity:

(a) shall have in force or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy of phonorecord of any other copyrighted work, materials from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisos of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any materials to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

These guidelines were accepted by the Conference Committee and were incorporated into its report on the new act. During the ensuing twenty months, both library and publisher organizations have reported considerable progress toward adapting their practices to conform with the CONTU guidelines.

The guidelines specifically leave the status of periodical articles more than five years old to future determination. Moreover, institutions set up for the specific purpose of supplying photocopies of copyrighted material are excluded from coverage of the guidelines.

### **Copyright Guideline for Use of Audiovisual Materials**

In compliance with the Copyright Act outlined in U.S. Code, Title 17, Section 110, the use of audiovisual materials purchased by IUP library should follow the guidelines as listed below.

#### **In Classroom Use**

Under fair use guidelines, instructors or students are allowed to use these materials in the classroom, library, office and student dormitory in connection with face-to-face teaching, research and learning activities

#### **Online Class Use**

Audiovisual materials purchased by IUP library do not include digitizing/streaming rights or permission. It is the instructor's responsibility to obtain such rights/permission in order to use the materials for online class.

#### **Public Event Use**

Unless public performance license is obtained, audiovisual materials purchased by IUP library are not permitted to show in a public event.

#### **Duplication**

Duplicating audio or video without permission is a violation of copyright law. IUP library does not provide such service.

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#### **References:**

Digital Millennium Copyright Act

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105\\_cong\\_public\\_laws&docid=f:publ304.105.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=105_cong_public_laws&docid=f:publ304.105.pdf)

Fair Use Guidelines For Educational Multimedia

<http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>

U.S. Code Title 17

[http://assembler.law.cornell.edu/uscode/html/uscode17/usc\\_sup\\_01\\_17.html](http://assembler.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17.html)

**Library Technology and Security (LTS) Media and Equipment Policies and Guidelines****Media Utilization**

The IUP Libraries non-print collection is available to IUP students, faculty, and staff with valid IUP identification. IUP observes the Fair Use Doctrine of Copyrighted Media as defined by the Copyright Laws of the United States.

**Non-print Materials Duplication Guidelines:**

- Commercially produced non-print material (VHS, CD, and DVD) may not be copied.
- Non-print material of IUP original productions for which permission has been granted may be copied onto blank tapes and/or DVDs which are supplied by patron or purchased through media and equipment.
- Only duplication requests consistent with the IUP Libraries Policy for Duplication of Audiovisual Materials as described in the copyright section of the IUP Libraries Policy Manual will be completed by LTS.

**Video Utilization Guidelines:**

- A purchased videotape/DVD, including many titles from the IUP Libraries 'on-print collection, may be used only for face-to-face instruction by an individual professor, not for public performance, entertainment, and/or closed circuit broadcast, unless an appropriate license and/or permission has been obtained due to copyright limitations.
- IUP faculty may check out non-print materials to review and prepare materials for classes for one week provided the materials are not on Reserve or needed for another class. Special arrangements must be made for any loan period over one week. All other borrowers may use non-print materials only in the Libraries.
- IUP students may check out non-print materials for a two-day loan (VCVs and DVDs).

**Campus-wide Media Equipment Utilization**

Students, faculty and staff may borrow A-V equipment for recognized activities that support the mission of the university. A currently enrolled IUP student may borrow audio-visual equipment from the LTS equipment pool for class projects, internships, or official student organizations. Equipment may not be borrowed for personal or entertainment use or removed from campus for use by community non-profit organizations or businesses

To make a request, borrowers must present their I-Card and another form of identification to the Media Desk. All equipment is checked out for a 4-day loan.

### **Digital Media Pod Stations Utilization**

- Use of the production equipment is designed for the Academic Mission of ITS: "Integrating Technology into the Curriculum."
- Do not alter the media stations or software in any way; access to the Pods will be forfeited for violators.
- Due to disk storage limitations, work files must be transferred off of Pod computers to other storages devices at the end of each working session. Failure to save and transfer file could result in loss of work. LTS staff reserves the right to delete files to without warning to free up hard drive space.
- Users are always responsible for the proper operation and shutdown of all equipment. Users who consistently neglect to properly operate and shut down media stations will lose their Pod privileges.

### **Teleconference Utilization**

IUP can facilitate regional or national teleconferences by acting in the capacity of a host site. In order to host teleconferences, copyright and licensing considerations must be approved in writing well in advance. Contact the Library Technology Services for more information.

### **Classrooms**

We have three classrooms that can be reserved for classes, meetings, etc. These can be reserved at the Media Desk, by phone or on our room reservation request form which is located on our LTS website. Faculty, staff and students may make these reservations.

We also have two group study rooms which can be reserved.

### **Coursepacks**

**In order to include copyrighted materials in a course pack, you need to get permission to use the materials.**

Coursepacks are to be limited to:

- Single chapters from a book
- Single article from a journal issue
- Several charts, graphs or illustrations
- Other similarly small parts of a work

Include:

- Copyright notice on original
- Complete citations and attributions to the source

Citation info:

<http://www.utsystem.edu/OGC>

<http://www.brown.edu/Administration/Copyright>

### **Research copies**

Under Section 108 of Title 17 (17 U.S.C. § 108), a library or archives may make one copy of an article or other short work, such as a book chapter, for a patron's individual study and research. Section 108 also allows a library or archives to make one copy of an entire work or a substantial part of a work for a patron's individual study and research.

<http://www.copyright.gov/title17/92chap1.html#108>

### **Copyright Registration for IUP Theses and Dissertations**

According to U.S. Copyright Office, thesis or dissertation is automatic "under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device". You don't have to register your work with the Copyright Office to make it official. However, you have to register if you want to sue someone for infringement. See *Copyright Basics*, section "Copyright Registration" for more information.

<http://www.copyright.gov/circs/circ1.pdf>

## **GRADUATE SCHOOL - USE OF COPYRIGHTED MATERIAL**

Permission to use works in the public domain, (i.e., works on which copyright never existed and those on which the copyright has expired) is not necessary but all works must be acknowledged. If the material has been published, or if an entire creation (e.g., a cartoon, a photograph, a test, or a completed form) is to be used, written permission from the copyright holder must be obtained that allows the student to use the work in the thesis or dissertation. Students should inform the copyholder that the manuscript is being submitted to Indiana University of Pennsylvania and will be available in the library. In addition, copies of the dissertation (and thesis if submitted electronically) will be sold on demand by ProQuest Information and Learning Company.

A copy of the permission letter must be provided. This copy will be kept on file for all students. Proper credit (as instructed in the letter of permission) must be given in the text.

Addresses for U.S. publishers are listed in *Books in Print* (published by R. R. Bowker Company) which is available in the reference section of Stapleton Library or on the web at <http://www.booksinprint.com/bip>.

More information about use of copyrighted material can be found on ProQuest's website [http://proquest.com/products\\_umi/dissertations/copyright/](http://proquest.com/products_umi/dissertations/copyright/) or on the website of the Library of Congress at <http://www.copyright.gov/>.

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