

# Copyright Guidelines for McGraw-Page Library

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These guidelines summarize uses of copyrighted works permitted by the U.S. Copyright Act. If a proposed use does not fall within a permitted activity described here, you should obtain permission from the copyright owner before using the work. It is important to remember that the copyright owner is the only party permitted to:

- reproduce
- distribute
- adapt/create new works from
- perform and/or
- display

a work for any reason, monetary or otherwise.

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## Guidelines for Library Use

A library is permitted to engage in the activities described in this section if it meets the following three conditions:

1. no copies or distributions are made for commercial purposes;
2. the library is open to the public or to researchers unaffiliated with the library; and
3. copies or distributions of a work must include a copyright notice.<sup>1</sup>

### Copies Made in Response to User Requests

A library may make and provide to a user one copy of an *article* from a periodical (or other collection) or a *small part* of any copyright work that it or another library (pursuant to interlibrary loan networks) owns, if it abides by all of the following requirements:<sup>2</sup>

1. the copy becomes the property of the user;
2. the library has no notice that the user will use it for any purpose other than private study, scholarship or research;
3. the copies are not made repeatedly or systematically;
4. the library does not believe that the user is requesting copies of the same work multiple times or that multiple users from a single group are requesting copies of the same work; and
5. the library prominently displays the following copyright warning (at the place where requests are accepted):<sup>3</sup>

NOTICE  
WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific 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.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

A library may make and provide to a user a copy of an *entire work* that it or another library (pursuant to interlibrary loan networks) owns if the work cannot otherwise be obtained at a reasonable price (e.g., if it is out-of-print).<sup>4</sup>

This permission to make and provide copies to users does not apply to musical, pictorial, graphical, or sculptural works and motion pictures or other audio-visual works,<sup>5</sup> except that a library may make and loan to users a small number of videotape recordings of daily news broadcasts.<sup>6</sup>

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<sup>1</sup> 17 U.S.C. § 108(a).

<sup>2</sup> 17 U.S.C. § 108(d) and (g); Nimmer, § 8.03[D] and [E][2].

<sup>3</sup> 37 C.F.R. § 201.14; Nimmer, § 8.03[E][2].

<sup>4</sup> 17 U.S.C. § 108(e); Nimmer, § 8.03[E][2].

<sup>5</sup> 17 U.S.C. § 108(i); Nimmer § 8.03[B][1].

<sup>6</sup> 17 U.S.C. § 108(f)(3); Nimmer § 8.03[F].

## Library Reserve<sup>7</sup>

The library will place on reserve:

1. a single copy of an article, chapter of a book, or a poem; and
2. multiple copies of a work if the library owns the work and the amount of material copied and the number of copies made are reasonable in comparison to the original work and the extent of student demand for the work.

Any materials placed on reserve will be removed at the end of the term.

At the request of a faculty member, the library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching discussed above. This College believes that these guidelines apply to the library reserve shelf to the extent it functions as an extension of classroom readings or reflects an individual student's right to photocopy for his personal scholastic use under the doctrine of fair use. In general, librarians may photocopy 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 advance independent study and research.

If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, or an entire chapter from a book, or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

1. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level;
2. the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material;
3. the material should contain a notice of copyright; and
4. the effect of photocopying the material should not be detrimental to the market for the work. In general, the library should own at least one copy of the work.

For example, a professor may place on reserve as a supplement to the course textbook a reasonable number of copies of articles from academic journals or chapters from trade books. A reasonable number of copies will in most instances be less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students and the length of time allowed for completion of the assignment may permit more in unusual circumstances.

In addition, a faculty member may also request that multiple copies of photocopied, copyrighted material be placed on the reserve shelf if there is insufficient time to obtain permission from the copyright owner. For example, a professor may place on reserve several photocopies of an entire article from a recent issue of Time magazine in lieu of distributing a copy to each member of the class.

## Interlibrary Loan

If the library requests, from another library, copies from a periodical or copyrighted work that it does not own, it may not request so many copies that such copies substitute for a subscription

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<sup>7</sup> Adapted from "Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve, found at: <http://www.cni.org/docs/infopols/ALA.html#mpup> citing 17 U.S.C. §§ 107(1), (3) and (4) and 17 U.S.C. §401.

of the periodical or a purchase of the work. To stay within this rule, the library should abide by the following guidelines:<sup>8</sup>

1. Within any calendar year, the library may not request more than 5 copies of one or more articles from one periodical published within the previous five years.<sup>9</sup>
2. Within any calendar year, the library may not request more than 5 copies of material from any one work.
3. The library fulfilling a request for copies may not fulfill the request unless the requesting library provides a written statement that the request conforms with these guidelines.
4. The requesting library must maintain records of all requests it has made during the current calendar year and the three previous years, and must include a copyright notice.

*From the National Commission on New Technological Uses of Copyrighted Works (CONTU) guidelines governing copying and interlibrary arrangements, CONTU Guidelines on Photocopying under Interlibrary Loan Arrangements, <http://www.cni.org/docs/infopols/CONTU.html> written in conjunction with Section 108 of the copyright law.*

## Replenishment of Library Collections

A library may make up to three copies of:

1. a *published* work that it owns, solely to replace that copy when it is damaged, deteriorating, lost or stolen, if it cannot obtain a replacement copy at a fair price,<sup>10</sup>
2. an *unpublished* work that it owns solely for the purposes of preservation and security.<sup>11</sup>

## Unsupervised Copying

A library that permits users to make unsupervised copying of library materials must post a notice that the making of a copy may be subject to copyright law. Generally, the library should use the same notice as provided above under "Copies Made in Response to User Requests".

## Guidelines for Faculty

### Photocopying of Copyrighted Works

For your own research or use in teaching, you may make a single copy of:

- a chapter from a book
- an article from a periodical or newspaper
- one short story, essay or short poem, or
- one chart, graph, diagram, drawing, cartoon, or picture from one book or periodical.<sup>12</sup>

You may make multiple copies of a work for one-time distribution in class if:

1. you make no more than one copy per student;

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<sup>8</sup> 17 U.S.C. § 108(g); Nimmer § 8.03[E][2][f].

<sup>9</sup> The law is unclear as to how many copies may be made from periodicals more than five years old. Generally, the library should not make so many copies that it substitutes such copies for a subscription. See Nimmer § 8.03[E][2][f].

<sup>10</sup> 17 U.S.C. § 108(c); Nimmer § 8.03[E][1].

<sup>11</sup> 17 U.S.C. § 108(b); Nimmer § 8.03[E][1].

<sup>12</sup> Nimmer § 13.05[E][3][b].

2. you include the copyright notice;
3. you do not charge the student for more than the actual cost of copying;
4. the copying does not create, replace or substitute for a book, anthology or compilation;
- and
5. the copying meets the following tests for brevity, spontaneity and cumulative effect:<sup>13</sup>

### **Brevity-**

You may copy:

*Poetry*- a complete poem if less than 250 words and on no more than two pages, or an excerpt of 250 words from a longer poem

*Prose* – a complete article, story or essay of less than 2,500 words or an excerpt of not more than 1,000 words (or 10% of the work)

Illustration – one chart, graph, diagram, picture per book or periodical issue

### **Spontaneity-**

The copying is at the inspiration of the individual teacher and the decision to use the work is so immediate that it is unreasonable to expect a timely reply to a request for permission (i.e., it may not be a part of a pre-planned curriculum).

### **Cumulative Effect-**

- The copying is for only one course
- Not more than one short poem, article, story or essay may be copied from the same author during one class term
- No more than 9 instances of multiple copying for one course during one class term.

For additional information see the "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions, <http://www.cni.org/docs/infopols/NACS.html>

### **Activities that Require Permission**

The following activities are not permitted and will require advance permission from the copyright owner:<sup>14</sup>

1. *Repetitive copying*. The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright.
2. *Copying for profit*. Faculty should not charge students more than the actual cost of photocopying the material.
3. *Consumable works*. The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner.
4. *Creation of anthologies as basic text material for a course*. Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyrighted owners.

### **Use of Videotapes in the Classroom**

Faculty may show a videotape in a classroom for educational purposes, provided the videotape is lawfully purchased or made.<sup>15</sup>

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<sup>13</sup> Nimmer § 13.05[E][3][d].

<sup>14</sup> Adapted from "Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve, found at: <http://www.cni.org/docs/infopols/ALA.html#mpup> citing 17 U.S.C. §§ 107(1), (3) and (4).

You may lawfully record and show for a class only television programs broadcast by a public or non-profit broadcasting entity.<sup>16</sup> If you do so, you must show the program and then erase the recording within 7 days of the date the program was broadcast.<sup>17</sup> You may not record and show television programs from for-profit entities without their permission.

*Videos are covered in Section 110 (1) of the Copyright Act and Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes,*  
<http://www.musiclibraryassoc.org/Copyright/guiderec.htm>.

## **All Other Uses**

If a proposed copy or other use of a work does not fall within one of the permitted activities described above, it does not mean that such use is necessarily unlawful. Other lawful uses include:

### **Use of any Work in the Public Domain**

Works in the "public domain" are works that either were never copyrighted or works for which copyright has expired. There is no single clear-cut rule for determining what works were never copyrighted or for determining what copyrights have expired. The maximum copyright term is 95 years from December 31 of the year in which copyright was originally procured.<sup>18</sup>

For a detailed explanation of when a copyright enters the public domain, see the U.S. Copyright Office's Information Circulars No. 1, "Copyright Basics" and No. 15a, "Duration of copyright," which can be found at <http://www.loc.gov/copyright/circs>.

For the chart "When Works Pass into the Public Domain", created by Lolly Gasaway at UNC, see <http://www.unc.edu/~uncing/public-d.htm>.

As a general rule, almost all U.S. government publications are also in the public domain.<sup>19</sup> However, government publications may contain copyrighted materials in them. U.S. government publications are documents prepared by an official or employee of the U.S. government in an official capacity.<sup>20</sup>

### **Use of a Copyrighted Work that is Deemed to be "Fair Use"**

Unfortunately, there are also no clear-cut lines for determining what kinds of uses are deemed to be fair. A use of a copyrighted work may be deemed to be fair use, and therefore lawful, upon a balancing of the following four factors:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
  - If use of the work is not for profit and is for criticism, comment, news reporting, teaching, scholarship or research, it is more likely to be lawful.
- (2) the nature of the copyrighted work;

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<sup>15</sup> 17 U.S.C. § 110(1); Nimmer §8.15[B].

<sup>16</sup> 17 U.S.C. § 118(d)(3); Nimmer § 8.06[D].

<sup>17</sup> 17 U.S.C. § 118(d)(3); Nimmer § 8.06[D].

<sup>18</sup> 17 U.S.C. § 304(b)

<sup>19</sup> 17 U.S.C. § 105.

<sup>20</sup> 17 U.S.C. § 101.

- If the work is a factual one and has been published, use of the work is more likely to be lawful than if the work is imaginative and unpublished.
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- The smaller the percentage of the work you use, the more likely the use will be lawful.
- (4) the effect of the use upon the potential market for or value of the copyrighted work.
- If your use of the work is likely to compete with sales of the work or avoids payment of royalties where permission can be obtained, then the use is more likely to be unlawful.

*For more information on fair use, consult the University of Texas web-site, "Fair Use of Copyrighted Materials" at <http://www.utsystem.edu/ogc/IntellectualProperty/copypol2.htm>.*

## Helpful Web-Sites

### Copyright Law and Guidelines

#### LAW

Copyright Law of the United States of America  
 Title 17 of the United State Code, Revised to April 2000  
<http://www.loc.gov/copyright/title17>

#### CONGRESSIONAL GUIDELINES

Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions With Respect To Books and Periodicals

National Association of College Stores and the Association of American Publishers, 1976  
<http://www.cni.org/docs/infopols/NACS.html>

Guidelines for Educational Uses of Music

Music Publishers' Association of the United States, et al., 1976  
<http://www.musiclibraryassoc.org/Copyright/guidemus.htm>

Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes  
 1979

<http://www.musiclibraryassoc.org/Copyright/guiderec.htm>

#### LIBRARY GUIDELINES

Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use

American Library Association, March 1982  
<http://www.cni.org/docs/infopols/ALA.html#mpup>

CONTU (TU- Technological Uses) Guidelines on Photocopying under Interlibrary Loan Arrangements

Library of Congress, 1979  
<http://www.cni.org/docs/infopols/CONTU.html>

## CONFERENCE GUIDELINES

CONFU (FU- Fair Use)  
1997

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

### Copyright Policies from Selected Universities and Libraries

- American Library Association, "Copyright and Intellectual Property"  
<http://www.ala.org/washoff/property.html>
- Groton Public Schools, "Copyright Implementation Manual"  
<http://www.groton.k12.ct.us/mts/cimhp01.htm>
- Stanford University Libraries, "Copyright and Fair Use"  
<http://fairuse.stanford.edu/library/>
- University of Texas Libraries, "Copyright Tutorial"  
<http://www.lib.utsystem.edu/copyright/>
- University of Virginia Libraries, "Copyright"  
<http://www.lib.virginia.edu/acqpres/copyright/copy.html>
- Virginia Tech Libraries, "Copyright Policies"  
<http://scholar.lib.vt.edu/copyright/>
- Washington & Lee University, "Policy for the Use of Copyrighted Works"  
<http://www.wlu.edu/library/copyrighttoc.html>

### Sites to Help You Obtain Copyright Permission

For authors, use WATCH: Writers, Artists and their Copyright Holders, at the University of Texas:  
<http://www.hrc.utexas.edu/watch/watch.html>

For copyright clearance on recent articles or books,

- check with the Copyright Clearance Center: <http://www.copyright.com>
- contact the permission department of the publisher, or
- pay an automated copyright permission clearinghouse, such as iCopyright.com:  
<http://www.icopyright.com>

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