

Copyright: *"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." - from Article I, Section 8 U.S. Constitution*

MCKENDREE UNIVERSITY

COPYRIGHT COMPLIANCE POLICY

The purpose of McKendree University's ["McKendree"] *Copyright Compliance Policy* is to provide a summary of U.S. copyright law as it relates to the use of text- and digital-based content of copyright-protected works.

U.S. copyright law contains many gray areas, and the goal of this policy is to provide McKendree administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers issues such as photocopying, uploading digital content to content management systems, library uses for print and electronic reserves and interlibrary loan.

This policy provides practical advice and procedures on copyright-related matters; however, it is not a substitute for legal advice.

WHAT IS COPYRIGHT?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

WHAT IS PROTECTED BY COPYRIGHT?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data or facts.

Public Domain:

All materials are either (1) protected by copyright or (2) in the public domain. Materials in the public domain can be used freely for any purpose.

All copyrighted works become a part of the public domain once their copyrights expire.

- ✓ Works published in the U.S. before 1923 are public domain
- ✓ Works published in the U.S. after 1977 have copyright protection for the lifetime of the author plus seventy years

Works may also be in the public domain if copyright holders make their works freely accessible through organizations such as the Creative Commons.

Fair Use:

You may use works without requesting copyright permission if an argument can be made for fair use. Copyright law defines fair use through a set of 4 factors. These factors are weighed in each case to determine whether a use qualifies as a fair use.

1. The purpose and character of the work

Has the work been used to help create something new and not merely copied verbatim into another work? For example, was the work transformed by adding new expression or meaning, creating new information, new aesthetics, new insights, and understandings? If yes, it is probably fair use.

2. The nature of the copyrighted work

Educators have more leeway to copy from factual works than fictional.

3. The amount and substantiality of the portion taken

Is the amount taken no more than what is pedagogically necessary? Does the portion taken avoid the "heart" of the work, the most memorable aspect? If yes, it is probably fair use.

4. *The effect of the use upon the potential market*

Does the use deprive the copyright owner of income or undermine a new or potential market for the copyrighted work? If yes, it is probably not fair use.

Educational Fair Use:

Institutions that qualify for educational fair use for which the work is transmitted must be an accredited nonprofit educational institution. Examples are colleges, universities, libraries and museums that engage in nonprofit instructional, research or scholarly activities for educational purposes. Examples of “educational purposes” are:

- ✓ noncommercial instruction or curriculum-based teaching by educators to students at nonprofit educational institution
- ✓ planned noncommercial study or investigation directed toward making a contribution to a field of knowledge, or
- ✓ presentation of research findings at noncommercial peer conferences, workshops, or seminars.

NOTE: If libraries or museums purchase resources for their collections where the vendor or publisher requires a contract or license that prohibits reproduction for any purpose, nothing in copyright law, including arguments for fair use, will justify a violation of this legal contract. Licenses trump fair use.

Rules for Photocopying through Print Shop or for Personal Use

Making copies of items that are copyrighted without consent of the owner may constitute an infringement of the copyright owner’s rights and may lead to liabilities. You are responsible for obtaining permission to make photocopies of copyrighted items. Copyrights can often be purchased through the Copyright Clearance Center online, or Fair Use is a limited exception for copies made for educational and non-profit purposes. Use the above mentioned Fair Use guidelines to determine whether making copies for your purpose is acceptable or not.

Rules for photocopying under educational fair use:

The Copyright Law of the United States (Title 17, US Code) governs the making of photocopies or 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 a violation of copyright law.

- ✓ Based on the above rules, individuals can only make single copies of items for personal use.
- ✓ Based on the above rules, an instructor can make enough photocopies of a given journal article or one chapter from a book for each student enrolled in a course.

Photocopying for interlibrary loan:

- ✓ Under section 108(d), "Limitation on exclusive rights: Reproduction by libraries and archives," libraries are authorized to furnish a photocopy. 108(d) reads:

"The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if

1. the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
2. The library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation."

Rules for Library Reserves under educational fair use:

- ✓ Items that do not need copyright permission include books the library owns, original journal issues, or items for which the instructor owns the copyright
- ✓ One copy per textbook is allowed to be put on reserve, not multiple copies.
- ✓ Workbooks, lab books, and other items that are meant for single use are not allowed on reserve.
- ✓ The library reserves the right to pull items off of reserve that have been used for two or more semesters.

Guidelines for using copyrighted digital content for educational fair use:

While Section 110(2) of the Copyright Act provides specific protection for some streaming and other uses, it does not cover the entire variety of digital uses that are becoming increasingly important to twenty-first-century instruction. Since copyright law has not kept pace with emerging technologies, fair use plays a key role in the online world. However, simple, clean, concise rules do not exist in the law of fair use.

Holman Library at McKendree University uses the T.E.A.C.H. Act [Technology, Education And Copyright Harmonization] and *Code of Best Practices in Fair Use for*

Academic and Research Libraries to help guide the university through this murky area of fair use and copyright law.

Guidelines:

1. Limit access to a specific number of students enrolled in a specific class.
2. Do not make copyrighted materials available to students after the class session or course is complete.
3. Avoid substantial excerpts from novels, short stories, poetry, modern art images, and other such materials since fair use applies more narrowly to highly creative works.
4. Do not post on Blackboard digital content created and marketed by publishers primarily for use in courses such as textbooks, workbooks or course packs that are usually purchased by students.
5. Unless the materials are in the public domain, provide links to a website or the PDF of an article rather than copying text or uploading the entire article. A link to an article is often possible through the Holman Library databases.
6. Avoid streaming an entire video without carefully considering whether you can make a fair use argument that it is pedagogically necessary. If not, only stream that portion that is directly related and of material assistance to the learning outcomes of the course.
7. Check with the library before streaming a DVD to see if streaming rights were purchased or are necessary.
8. In order to stream video content, it must be in digital format. Analog materials such as a VHS may only be converted to digital format if no digital version is available.
9. Ensure that encryption or other technological measures to prevent retention of the video or media are not being circumvented.
10. Inform students that materials used in connection with the course may be subject to copyright protection and place a notice of copyright on the online materials.
11. Provide full attribution, in a form satisfactory to scholars in the field, for each work included or excerpted.

Public Performance Rights

Any film showing outside of a scheduled class by any person, student group, organization, etc. is considered public viewing. If a film is being shown for public viewing, a licensing fee is required by federal law. The person(s) showing a film are responsible for acquiring public performance rights or other permission from the copyright owner. The library owns some (limited) videos that were purchased with performance rights.

Sources and Further Reading:

Copyright Law of the United States, Title 17. <http://www.copyright.gov/title17/>

Technology, Education and Copyright Harmonization Act (the TEACH Act):
<http://www.ala.org/advocacy/copyright/teachact>

American Library Association: <http://www.ala.org/advocacy/copyright/>

Association of Research Libraries: <http://www.arl.org/pp/ppcopyright/>

Center for Social Media: <http://www.centerforsocialmedia.org/fair-use>

Code in Best Practices in Fair Use for Academic and Research Libraries:
<http://www.arl.org/pp/ppcopyright/codefairuse/code/index.shtml>

Stanford University's Fair Use and Copyright Center:
<http://fairuse.stanford.edu/index.html>

Georgia Harper's Crash Course in Copyright at the University of Texas
<http://copyright.lib.utexas.edu/>

For further information and advice on copyright and fair use, contact Jennifer Funk, Public Services Librarian, Holman Library, 618-537-6515, jafunk@mckendree.edu