© Using Copyrighted Materials in the Classroom



Maricopa Center for Learning and Instruction (MCLI)
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V. Using Copyrighted Software

Copyrighted computer software cannot be duplicated without the permission of the copyright holder, just as copyrighted books and videotapes may not be duplicated without permission. Again, educational use alone does not constitute Fair Use.

Before a copyrighted software program may be duplicated for student use or placed on a server for access by network users, permission in writing must be obtained from the copyright owners. Contact you college computer coordinator for information on obtaining and monitoring such permissions.

The copyright law of 1976 was amended in December of 1980 to focus on duplication of copyrighted software by purchasers of that software. This amendment defines two circumstances under which such duplication is considered legal:

1. When the creation of a copy is an essential step in allowing the software to run on a particular computer; or

2. When the copy is created for archival purposes only (to be stored away and used only if the original fails) with the understanding that it will be destroyed "in the event that continued possession of the computer program should cease to be rightful."

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Using Copyrighted Materials in the Classroom

The following guidelines are intended to assist faculty who wish to duplicate and use (in whole or in part) copyrighted books, magazines, periodicals, and/or videotapes.

Much of this same material is included in the videotape, ***Using Copyrighted Materials: A Guide for Faculty,*** and the accompanying brochure, available through your college media services or the Maricopa Center for Learning and Instruction at the District Office.

The entire text of the Copyright Act of 1976 and other useful information about copyright are available on-line via the District Office's Public Access Server, currently Macintosh-based through the AppleShare Network. For information regarding the Public Access Server, contact the MCCCD Legal Department (731-8876) or the Maricopa Center for Learning and Instruction (731–8300).

For specific questions about the copyright policy and its applications, contact the MCCCD General Legal Counsel, Janice Bradshaw (731–8875).

For general questions about the copyright law and its applications, call the Copyright Hotline, a toll-free number maintained by the Association for Information, Media, and Equipment (AIME): 1–800–444–4203.

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I. The Rights of the Copyright Owner

The Congress enacted the Copyright Act of 1976 to protect intellectual property as an incentive to the creation of such property. In other words, you have little incentive to create something such as a book, a film, a musical composition, or a poem if anyone else may use it or profit from it without your permission.

In brief, section 106 of the Copyright Act of 1976 defines the five basic rights of all copyright holders:

1. **The right to make copies.** If you own the copyright for something you create, then you alone have the right to make copies of that work and to authorize others to make copies (except as explained below under the Fair Use Doctrine).

2. **The right to make derivative works.** If you own the copyright, someone else cannot take your work, make a few changes (cuts, reordering of sections, rewriting, etc.) and thus create a new work without your permission.

3. **The right to sell or distribute to the public.** If you own the copyright, no one else may sell copies of your work without your permission. If you choose to give your permission for public sale and distribution, you are entitled to set the conditions, including a fee or royalty for yourself.

4. **The right to perform or display work in public.** For example, if you have made a film or written a play, no one may give public performances of your work without your permission. Again, you have the right to set the conditions and collect a fee.

II. Fair Use

[The material for this section is derived from "Questions and Answers on Copyright for the Campus Community," Copyright 1991 The National Association of College Stores, Inc. and The Association of American Publishers.]

The Copyright Act does set some limitations on those copyright owner's rights, the so-called Fair Use Doctrine. This section of the Act explains the circumstances under which you as a faculty member may duplicate copyrighted materials without first securing the permission of the copyright holder. Those circumstances include "criticism, comment, news reporting, teaching (including multiple copies for

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from a video store or borrowed the tape from a public lending library, you need to be sure that your agreement with your source does not prohibit your showing the tape in class). Second, the use of the tape must fulfill legitimate teaching objectives (in other words, not something you show just to entertain your students or pass the time). Third, you or your students must show the tape in the classroom.

You need not show the whole tape, but you cannot copy portions of a copyrighted video program and show only that copy in class. Such a copy would constitute a derivative work, and the copyright law guarantees the copyright owner the exclusive right to make derivative works.

B. Over–the–Air Recordings

You may record a television program that has been broadcast over the air (in other words, something that can be received for free by anyone with an antenna). You may then show that recording in your classroom—under the provisions of the face–to–face exemption—for a period of ten teaching days or two weeks after the program was broadcast. After ten days, you may keep the recording for your own personal use, but you may not show the tape again in your class unless you first obtain permission (for example, a life–of–the–tape license) from the copyright owner.

However, if the program is available only via cable—not a program that can be received for free by anyone with an antenna—then you may record the program for your own use in your own home, but you may not show the recording in your classroom without permission of the copyright owner—regardless of when the recording was made.

Contact your college media services for information and assistance in making over–the–air recordings and obtaining permission for the college to keep and reuse the recording. In general, it is requested that requests for over-the-air recordings be made as far in advance as possible of the broadcast or cablecast of the program you wish to use.

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When requesting permission to duplicate copyrighted works, the Association of American Publishers recommends you include the following information in your request:

a. the author's, editor's, translator's full name(s)

b. title, edition, and volume number of book or journal

c. copyright date

d. ISBN for books, ISSN for magazines and journals

e. numbers of the exact pages, figures, and illustrations

f. exact chapter(s) and exact page numbers if you are requesting a chapter or more

g. number of copies to be made

h. whether the material will be used alone or combined with other photocopied materials

i. name of college

j. course name and number

k. semester and year in which materials will be used

l. your full name as requestor

Permissions should always be requested this way whether or not the works are in print.

IV. Using Copyrighted Video Materials

A. Purchased Videotapes

In your own classroom, you may show copyrighted videotapes that you or the college has purchased—even if the videotape includes a notice that the program is intended for home use only—provided certain conditions are met. These conditions are known as the face-to-face teaching exemption: First, the copy must have been legally made and purchased from an authorized supplier. (If you have rented a tape

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classroom use), scholarship, or research." Within these circumstances, four factors determine whether or not your use constitutes Fair Use:

1. The purpose and character of the use (in other words, if the material is used for educational purposes in a nonprofit institution);

2. The nature of the copyrighted work (for example, a non-fiction journal article or work of fiction);

3. The amount of the work being used (in other words, if only a fragment of the work were being copied for a class, as opposed to an entire short story or essay); and,

4. The effect of the use on the potential market for or value of the copyrighted work (in other words, if use of the work in any way diminishes any potential revenues to which the copyright owner would otherwise be entitled).

If all of the above conditions are met, you may make multiple copies (but not more than one copy per pupil in a course) **provided that the copying also meets the tests of brevity, spontaneity, and cumulative effect**, and each copy includes a notice of copyright.

Examples of Brevity:

- A complete poem of less than 250 words not printed on more than two pages or an excerpt of not more than 250 words from a larger poem.

- A complete article, story, or essay of less than 2500 words or an excerpt from any prose work of not more than 1000 words or 10% of the work.

- One chart, graph diagram, drawing, cartoon, or picture per book or periodical issue.

Examples of Spontaneity:

- The faculty requests the copying, and

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

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Examples of Cumulative Effect:

- The copying is for only one course in the school in which the copies are made.
- Not more than one short poem, article, story, essay, or two excerpts may be from the same author.
- Not more than three excerpts may be from the same collective work or periodical volume during one class term.
- There are no more than nine instances of such multiple copying for one course during one class term.
- Students are not asked to pay for more than the actual copying itself.

Educational use of copyrighted materials alone does not constitute Fair Use; all four of the factors described above must be considered along with the tests of brevity, spontaneity, and cumulative effect.

In addition, Fair Use does not authorize copying to create, replace, or substitute for anthologies, compilations, or collective works, either bound together or separately. You must have the copyright owner's permission before doing this kind of duplicating.

To duplicate and use copyrighted materials in any way that does not fall under the guidelines of Fair Use, follow the guidelines in the following sections.

[Note: the Fair Use guidelines described above do not apply to the copying of musical scores or sound recordings. Consult the online text of the full law (available through the District's Public Access Server) for information about copying these materials.]

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III. Permissions for Copyrighted Print Materials

A. Take Duplicating Requests to the Bookstore

Follett bookstores have the resources to obtain copyright permissions for you and at no expense to you as a faculty member. Whether you wish to duplicate a single excerpt or create your own custom anthology, you need only take originals to the bookstore and fill out a standard request form. The bookstore can obtain all necessary permissions, duplicate the materials, and collect any required permission fees for you.

Contact the bookstore manager at your college for more information about copyright clearance and duplicating services available through the Follett bookstores.

The bookstores request that complex compilations or custom anthologies be requested at least 12 weeks in advance of when they are needed.

B. Obtain Permissions Yourself

Send your requests directly to a publisher's Copyrights and Permissions Department, not to the author of the work you wish to duplicate or send your requests to the Copyright Clearance Center, Inc., a nonprofit organization established in 1978 at the request of Congress to assist faculty with obtaining permissions for duplicating copyrighted materials. This company reportedly has contacts and resources to expedite your permission requests; however, they cannot guarantee 100% fulfillment of all permissions requests.

According to an article in *The Chronicle of Higher Education* dated June 16, 1993, "The Clearance Center has agreements with 2500 publishers to act as their agent in granting copyright permissions under certain conditions...[The Center] can respond within 48 hours to half the requests it receives and can give an answer within two weeks to an additional 15% ... Anecdotal evidence suggests that royalty rates vary from no fee at all to more than $1 a page. The average is thought to be 3 to 5 cents a page."

For more information, contact the Copyright Clearance Center, Inc., 27 Congress Street, Salem, Massachusettes 01970; Phone: (508) 744–3350;
FAX: (508) 741–2318.

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