Questions & Answers on Copyright for the Campus Community

Excerpt from Section I: INTRODUCTION

Although copying all or part of a work without obtaining permission may appear to be an easy and convenient solution to an immediate problem, such unauthorized copying may violate the rights of the author or publisher of the copyrighted work, and be directly contrary to the academic mission to teach respect for ideas and the intellectual property that expresses those ideas. Without understanding the copyright law, including elements such as the doctrine of "fair use" and its application and limitations in the educational setting, faculty members, students, centers, college stores, universities, colleges and others will be at risk for engaging in illegal copying.

QUESTIONS AND ANSWERS CONCERNING COPYING PRINT AND DIGITAL WORKS

1. What is copyright? What does it protect? How long does it last?
   The copyright law protects works by providing fair returns to creators and copyright owners... unauthorized and uncompensated copying could severely reduce their incentive to create new materials in all formats.

2. What types of works can claim copyright protection?
   Copyright protection exists in “original works of authorship” that are “fixed in a tangible medium of expression.” Among the types of works that are subject to copyright protection are literary, dramatic, musical, choreographic, pictorial, graphic, pantomime, sound recording, sculptural, motion picture, and audio-visual. These categories include reference works (including dictionaries), video cassettes, DVDs, and computer programs and databases. Works are protected in any medium, such as print, digital, or online.

   Copyright protection does not extend to facts, ideas, procedures, processes, systems, concepts, principles, or discoveries. However, a work such as a database and other compilation of facts, or literary work that incorporates ideas along with other expression is protected by copyright.

3. How do I find out who owns the copyright for a particular work?
   You should consult the location on the work or packaging containing the copyright notice (such as the copyright page in a book, or a link to a “copyright / legal” page on a website), as well as any acknowledgments. If you have a photocopy or other reproduction that does not contain a notice of copyright or acknowledgments, consult an original copy of the work.

   Most works contain a copyright notice, but because copyright ownership can be transferred after publication, your copy may not identify the current copyright owner. Works published after March 1, 1989, are not required to carry a copyright notice in order to be protected under the law. Therefore, the absence of a copyright notice does not mean that the work in question may be freely copied.

   If the work does not contain a copyright notice, the notice is no longer accurate, or you are unable to locate the person or entity identified in the notice, the first step in determining ownership is to contact the publisher of the work that you wish to copy. In most cases the publisher will either control the rights or be able to refer you to the current owner. For unpublished works, permission to copy must be obtained from the author of the work. If these steps prove unsuccessful, you should contact the U.S. Copyright Office. The U.S. Copyright Office maintains records of registered works by author and title, some of which may be searched online at www.copyright.gov/records/. For more information, ask the Copyright Office to send you Circular 22, “How to Investigate the Copyright Status of a Work,” by phoning (202) 707-9100, or going to www.loc.gov/copyright/circs.
4. What are the penalties for copyright infringement?  
Civil and criminal... [Read more.]

5. What is "fair use?" How does it affect copyrighted material?  
Fair use” is a defense to an allegation of infringement under the U.S. copyright law that excuses otherwise infringing limited use of portions of a copyrighted work without the copyright owner’s permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. There are no black-and-white rules for determining whether a particular activity may be considered a permissible fair use. Instead, Section 107 of the Copyright Act establishes four basic factors that must be considered in deciding whether a use constitutes fair use.

These factors are:

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

No one factor alone determines a person’s right to use a copyrighted work without permission.

6. Is all copying by educational institutions fair use?  
No... [Read more.]

7. Are there guidelines for educators and students to decide what is a fair use?  
Yes... [Read more.] (See Appendix A - Guidelines for Classroom Copying.)

8. What were the Kinko's and Michigan Document Services cases, and how did they affect college bookstores and copy shops that produce and sell customized course anthologies?

9. Will faculty members who assign customized course anthologies, or the colleges at which they teach, be liable for copyright infringement?  
Yes... [Read more.]

10. What are e-reserves? How do e-reserves differ from printed coursepacks for copyright purposes?  
The term “e-reserves”—short for “electronic reserves”—is commonly used to describe course readings that are digitized and made available on an academic department or library network site to students enrolled in the class. Students usually each need a password to access the readings and then may download and print their own copies. Unlike traditional paper reserves, posting readings in e-reserves always requires making copies of the original materials, and e-reserve systems typically make the readings available simultaneously to all students in the class, anywhere or anytime they choose. Permissions must be cleared for such use of materials in an e-reserve system just as they must be cleared for use in coursepacks.

Please see the AAP FAQ’s on E-Reserves. These are available online at: www.publishers.org/press/releases.cfm?PressReleaseArticleID=204.

11. How do principles of “fair use” in copyright law apply to materials included in e-reserve systems?  
The statute avoids specific answers and directs us to consider the four factors equally when determining if a particular use is "fair use," and it is always best to remind ourselves that "fair use" is an “affirmative defense” to an action for infringement of the exclusive rights of copyright. An affirmative defense means that infringement occurred, but it was legally excused. As a general rule, if use of the content would not be considered “fair use” in hard copy, it is not likely to be considered “fair use” in digitized form, whether as part of an e-reserve system or otherwise.
The applicability of “fair use” principles to materials in e-reserve systems will, as in all “fair use” cases, depend on the particular facts and circumstances involved. For example:

A. If the use does not qualify as fair use when all of the four factors are analyzed (giving due weight especially to the impact of the use on the potential market for the original work), then it is a violation of copyright whether or not the provider of the material is a nonprofit educational institution.

B. If the amount of material from one work included in an e-reserve system is more than minimal, and the work itself can be readily purchased or licensed for use in an e-reserve system, the inclusion of that material in the e-reserve system is not likely to constitute “fair use” because its inclusion—when considered under the statutory factors—would have a direct, negative effect on the “potential market” for the sale or licensing of the work.

C. If e-reserve postings are used to substitute for the purchase of books, or for the purchase or licensing of other copyrighted materials that would be used in course work, their use is not likely to constitute “fair use.”

D. There is no “first-time” exception in fair use; if use of the content does not qualify as fair use, it should not be used as such, even once.

12. **What should I do if some of the material I want to use is credited to a copyright owner that is not the copyright owner of the work itself?**

Oftentimes a work contains a variety of copyrighted items that are used by permission of another copyright owner. In most of these instances, the copyright owner of the entire work has obtained only nonexclusive permission to use these items. You should check the credits and acknowledgments in the work to identify the rightful owners of these copyrighted items and contact them for permission.

13. **Other than under the fair-use doctrine discussed in questions 5 through 7, can I ever copy material without infringing someone’s copyright?**

Yes... [Read more.]

14. **What if I request permission and I don’t get a response?**

Don’t assume... [Read more.]

15. **What can I do if course material has been ordered for a class but is late in arriving at the bookstore?**

You may be able to obtain permission from the copyright owner to photocopy or digitize a portion of the material until the book arrives. Each publisher has different procedures regarding such matters. You should contact the publisher to determine what procedures the publisher follows.

16. **Can a college store be liable for infringement if it unknowingly copies or sells works where permission has not been obtained?**

Yes... [Read more.]

17. **When can copyrighted works be uploaded to or downloaded from the Internet?**

You may upload or download copyrighted works when you are the copyright owner of the works, when you have permission from the copyright owner, or when uploading or downloading could be considered to be a fair use.

At least three exclusive rights of copyright are involved in uploading and downloading from the Internet. Uploading involves reproducing and displaying the copy and downloading involves making a copy and distributing the copy. Educators and students should consider the Guidelines discussed in this booklet before using copyrighted works on the Internet. For more information, consult the copyright information on the web site or request permission from the webmaster.
What is the TEACH Act?

Below is a checklist to assist you in determining whether or not you are ready to use the TEACH Act:

The Technology, Education and Copyright Harmonization Act (TEACH Act) was signed into law in November of 2002. The Act revised an existing exemption in the Copyright Act to authorize, for digital distance education purposes, performances and displays of copyrighted works that are analogous to the kinds of performances or displays of such works that take place in a live classroom setting. Although the Act expands the categories of works that can be reproduced for distance education, the Act includes several additional safeguards to prevent the unauthorized use of copyrighted materials, including:

1. Requiring the performance or display of the work to be made by or at the direction of an instructor as an integral part of a class session;
2. Requiring reception of the performance or display of the work be limited to students officially enrolled in the course for which it is made;
3. Requiring transient copies to be retained only as long as reasonably necessary to complete the transmission; and
4. Limiting performance of certain works to reasonable and limited portions.

- My institution is a nonprofit educational institution or a governmental agency.
- It has a policy on the use of copyrighted materials.
- It provides accurate information to faculty, students and staff about copyright.
- Its systems will not interfere with technological controls within the materials I want to use.
- The materials I want to use are specifically for students in my class.
- Only those students will have access to the materials.
- The materials will be provided at my direction during the relevant lesson.
- The materials are directly related and of material assistance to my teaching content.
- My class is part of the regular offerings of my institution.
- I will include a notice that the materials are protected by copyright.
- I will use technology that reasonably limits the students’ ability to retain or further distribute the materials.

- I will make the materials available to the students only for a period of time that is relevant to the context of a class session.
- I will store the materials on a secure server and transmit them only as permitted by this law.
- I will not make any copies other than the one I need to make the transmission.
- The materials are of the proper type and amount the law authorizes:
  - Entire performances of nondramatic literary and musical works.¹
  - Reasonable and limited parts of dramatic literary, musical, or audiovisual works.²
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching.³
- The materials are not among those the law specifically excludes from its coverage:
  - Materials specifically marketed for classroom use for digital distance education.
  - Copies I know or should know are illegal.
  - Textbooks, coursepacks, electronic reserves, and similar materials typically purchased individually by the students for independent review outside the classroom or class session.
- If I am using an analog original, I checked before digitizing it to be sure:
  - I copied only the amount that I am authorized to transmit.
  - There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes.

Checklist created by Georgia Harper, University of Texas System. Permission granted to include in pamphlet June 4, 2003.

¹ Nondramatic works exclude audiovisual works but include works such as poetry, short story, and nondramatic musical works other than opera, music videos, and musicals.
² Includes all audiovisual works such as films and videos of all types, and any dramatic musical works excluded above.
³ Includes still images of all kinds.
19. **What is the Digital Millennium Copyright Act (DMCA)?**

The DMCA was enacted in October 1998 primarily to bring U.S. copyright law into conformity with provisions of two World Intellectual Property Organization treaties to which the U.S. is a signatory. This Act facilitates the creation of a secure digital environment for use of copyrighted materials by encouraging the deployment of, and respect for, encryption and other technological protection systems. Accordingly, the DMCA prohibits (with certain limited exceptions): (1) manufacturing, importing, distributing, and providing products or services whose main purpose is to circumvent these systems; (2) taking action to engage in circumvention so as to gain unauthorized access to copyrighted works; and (3) removing, falsifying, or tampering with "copyright management information" (that is conveyed electronically with copyrighted works to identify them and their owners and provide other pertinent data about them). Beyond satisfying treaty obligations, the Act also seeks to clarify the rules for operating digital networks by (1) defining the circumstances that limit the liability of those entities that provide network services and (2) establishing procedures to facilitate the identification and correction of infringing activities engaged in by users through such networks.

Nothing in the DMCA would prevent an alleged infringer of a digital work from claiming that his or her use of the work was fair use under Section 107 of the Copyright Act. The same four factors would be considered in determining whether the use of the material was fair. However, the anti-circumvention provisions of the DMCA, referred to above, may have the practical effect of limiting access to, and therefore limiting use of, digitized works that are protected by encryption or other technological devices that physically prevent unlicensed copying, distribution, display, or performance of any portion of the works.

20. **What special relevance does the DMCA have for the campus community?**

By sanctioning the deployment of technological systems, the DMCA recognizes the rights that copyright owners (including university presses) have to protect their works against unauthorized access and copying that can be especially damaging in the open environment of higher education where the “free” exchange of information and ideas is encouraged.

However, the DMCA provides certain categories of immunity, or “safe harbors,” for online service providers (“a provider of online services or network access, or the operator of facilities therefore”). If colleges, universities, and college bookstores qualify under the DMCA as “service providers,” they may likely take advantage of the DMCA “safe harbor” limitations when acting as a service provider, regardless of whether such institutions are nonprofit. In order to take advantage of these “safe harbors,” a service provider must register a copyright agent with the U.S. Copyright Office at [www.loc.gov/copyright](http://www.loc.gov/copyright), adopt and implement copyright policies, educate the campus community about the copyright law, implement a “notice and takedown” procedure for addressing receipt of infringement notices, and otherwise meet the requirements for protection.

The statute creates four categories of infringement for which a service provider may be eligible for protection, including (1) transitory communications, such as transmitting digital information from one point on a network to another at a third party’s request; (2) system caching, which is the practice of retaining copies of third-party material only for a limited time period; (3) information location tools, such as search engines and hyperlinks; and (4) storage of information on systems or networks including the posting of infringing material by a student, professor, or other third party on a college or university web site. (The fourth category is probably the most important in terms of relevance to an institution of higher education.) For more information on the Digital Millennium Copyright Act of 1998, go to [www.loc.gov/copyright/legislation/dmca.pdf](http://www.loc.gov/copyright/legislation/dmca.pdf).
Obtaining Permission to Copy

Publisher contact information for clearing permissions is available on the Association of American Publishers web site at www.publishers.org/about/rpacurls.cfm and the Association of American University Presses web site at www.aaupnet.org/membership/directory.html. In addition, online permission is available for some materials from the Copyright Clearance Center’s web site, www.copyright.com.

1. Request permission before or at the same time you order textbooks.
   The earlier your request is received the better, in case it cannot be granted and you need to substitute other materials. Publishers do not always control the rights and need time to research the extent to which permission may be granted or to refer you to the correct copyright owner. Each request requires a careful check of the status of the copyright, a determination of the exact materials to be duplicated (which sometimes involves ordering a copy of the material from a warehouse). In other words, the greater the lead time you give the copyright owner to respond to your request, the more likely it is that you will get the permission you seek in a timely fashion.

2. Individual requests may be directed to the publisher's Rights and Permissions Department.
   The page containing the copyright notice shows who owns the copyright, the year of publication, and the publisher’s name. The acknowledgment page may also contain information regarding copyright ownership. If the rights are held by the author or another publisher, you will be referred to the correct copyright owner. If the address of the publisher does not appear with the material, it may be obtained from a variety of resources such as the National Association of College Stores’ Book Buyers’ Manual; the American Booksellers Association’s Publishers Directory; the Association of American University Presses Directory (available from the University of Chicago Press); Books in Print; The Literary Marketplace (for books); The International Literary Marketplace (for international listings); or Ulrich’s International Periodicals Directory (for journals), published by R.R. Bowker Co., and available in any library. Your college store also has access to a few of these and similar resources. The Software & Information Industry Association includes a directory of software publishers on its home page (www.siia.net). The Authors Registry can help you find specific authors. The Authors Registry can be reached at www.authorsregistry.org or by writing to Authors Registry, 31 East 28th Street, 10th Floor, New York, NY 10016.

   Some publishers and copyright owners have registered their titles with the Copyright Clearance Center (CCC), a non-for-profit clearinghouse for clearing permissions for over 1.75 million titles. The CCC offers an online service for clearing permission for analog and e-coursepacks at www.copyright.com. The CCC can also be reached by writing to 222 Rosewood Drive, Danvers, MA 01923.

3. Include all of the following information in your request:
   A. Author's, editor's, translator's full name(s);
   B. Title, edition, and volume number of book, journal, or other material;
   C. Copyright date;
   D. ISBN for books, ISSN for magazines and journals;
   E. Numbers of the exact pages, figures, and illustrations;
   F. If you are requesting a chapter or more: both exact chapter(s) and exact page numbers;
   G. Number of copies to be made;
   H. Whether material will be used alone or combined with other photocopied materials;
   I. Name of your college or university;
   J. Course name and number;
   K. Semester and year in which material will be used; and
   L. Instructor's full name.