

## Appendix 3

### Copyright Policy

It is the intent of Hendrix College that all members of the College community adhere to the provisions of the United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.). The following policy statements and guidelines constitute a manual for anyone at the College who wishes to reproduce, alter, or perform works that are protected by copyright. Since copyright protection applies to a variety of creative works -- printed materials, sound recordings, video recordings, visual artworks, computer software, and others - the manual has been constructed to address issues related to particular types of media.

U.S. copyright law and relevant commentaries are available in the Bailey Library Faculty Development Collection and on the Bailey Library web site. For questions about Copyright Policy, consult the Library Director who will seek advice or clarification from the Copyright Team or appropriate members of the Copyright Team. Members of the Copyright Team include the Library Director; Systems Librarian; Public Services Librarian for Interlibrary Loan, Reserves, and Government Documents; Library Media Center Director; Assistant Director of Information Technology/Academic Computing; Director of Student Activities; and two faculty representatives selected from the Committee on Information and Instructional Resources. The CIIR is responsible for this Copyright Policy, and the Copyright Team will make specific policy recommendations to the CIIR. This Copyright Policy will be reviewed as needed. Likewise, copyright materials in the Bailey Library's Faculty Development Collection and on the Bailey web page will be reviewed as needed.

Members of the College community who willfully disregard this Copyright Policy assume all liability.

#### **WHAT COPYRIGHT IS**

Copyright is a form of legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. Publication is not essential for copyright protection, nor is the well-known symbol of the encircled "c". Section 106 of the Copyright Act (90 Stat 2541) generally gives the owner of copyright the **exclusive** right to do and to authorize others to do the following:

- Reproduce copies of the work.
- Prepare derivative works based on the copyrighted work.
- Distribute copies of the work by sale, rental, lease, or lending.
- Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).
- Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work -- including the individual images of a film--or a pantomime).

---

The copyright owner retains these rights even when the work itself belongs to someone else. However, the rights are not absolute. They are subject to both "Fair Use" limitations, which apply to all media, and medium-specific limitations.

## **FAIR USE**

The doctrine of fair use, embedded in section 107 of the Copyright Act of 1976, addresses the needs of scholars and students by mitigating the rights of copyright ownership. However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules. To determine fair use, consider the following four factors [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

- The **purpose and character** of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.
- The **nature** of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.
- The **amount, substantiality, or portion** used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.
- The effect of the use on the **potential market** of the copyrighted work. This factor is regarded as the most critical one in determining fair use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

## **Permission for Copying in Excess of Fair Use**

The College will participate in contractual arrangements mandating royalty payments or licensing fees to copyright owners whenever feasible. Nevertheless, it often falls to the individual scholar to obtain written permission from the copyright owner to copy a large portion of a work or an entire work, or to produce multiple copies of chapters or periodical articles. Call the Bailey Library for help with the permission process.

---

## PRINTED MATERIALS

### Works that May be Used Freely

Occasionally, scholarly publications such as journal articles include a note offering the right to copy for educational purposes. Some categories of publications are in the public domain (such as most government documents); that is, copyright law does not protect their use. Once a work has acquired public domain status it is no longer eligible for copyright protection.

## PHOTOCOPYING

### Printed Materials Other Than Music: What Quantity Conforms to the Law?

The following parameters are widely considered to be inappropriately restrictive for academic needs. However, they define the limits within which we can be sure of complying with copyright law. Somewhat more extensive copying **may** be sanctioned by the fair use guidelines.

#### Single Copies for Scholarly Needs or Library Reserve

- A chapter of a book.
- A newspaper or periodical article.
- A short story, short essay, or short poem.
- A chart, diagram, drawing, graph, cartoon, or picture.
- Articles, etc. that are submitted for Reserve are considered the property of the instructor and will be returned at semester-end. (See "Library Reserve Services", for further information)

Multiple Copies for Classroom Use must meet the following tests of **brevity**, **spontaneity**, and **cumulative effect**. Each copy must include the following notice that it is copyrighted material: NOTICE: This material may be protected by Copyright Law (Title 17 U.S. Code).

#### Brevity

- Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) 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 an excerpt of up to 500 words.
- Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words.
- (Each of the numerical limits above may be expanded to permit the completion of an unfinished prose paragraph or line of a poem.)
- Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

- 
- Special Works: Certain works in poetry or prose or in "poetic prose", which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

### **Spontaneity**

- The copying is at the instance and inspiration of the individual instructor.
- 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**

- The copying of the material is for only one course, with no more than one copy per student in the course.
- Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during a semester.
- There shall not be more than nine instances of such multiple copying for one course during a semester.

### **Course Packets**

Copyright litigation involving academic users has focused on these "anthologies", which are perceived as substituting for textbooks and thus as reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center. Permission to use copyrighted materials can take some time to secure; therefore it is recommended that you begin pursuing these permissions at least two months in advance to assure ample time for copyright clearance. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 1990 by Academic Books, Inc." Individuals who purchase course packets should not be charged in excess of cost.

## **PHOTOCOPYING MUSIC FOR EDUCATIONAL PURPOSES**

### **What Quantity Conforms to the Law?**

- For a Performance: Emergency copying is permitted so long as replacement copies are subsequently purchased.
- Single Copies for Personal or Library Reserve Use (Academic Purposes Other Than Performance): An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

- 
- Multiple Copies for Classroom (Non-Performance) Use: Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.
  - Packets of Photocopied Music Excerpts: See section above, "Course Packets."

### Photocopies Obtained Through Interlibrary Loan

Section 108(d) of the Copyright Law of 1976 specifies that a library may copy "no more than one article or other contribution to a copyrighted collection or periodical issue, or to . . . a small part of any other copyrighted work." The copy must become the property of the requestor, and its use is limited to "private study, scholarship, or research."

Interlibrary Loan activities are further restricted in the aggregate by the "CONTU Guidelines", which cap the amount of photocopying the ILL office can request for the College community in any calendar year. The thrust of the "Guidelines" is to quantify the maximum number of photocopied articles -- five -- that can be requested from the most recent five years of a periodical to which the library does not subscribe. The "CONTU Guidelines" are available in the Interlibrary Loan office. Individuals requesting copies in excess of the CONTU allowance may be asked to pay a royalty or the fee necessary to obtain such copies commercially.

The Interlibrary Loan office is legally obligated to display prominently the following notice and to include the same text on all request forms:

*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 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.*

*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.*

### Photocopy Machines

Every photocopy machine on campus must include effective signage incorporating the following text:

*Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.*

### Library Reserve Services

Since library reserve services function as classroom adjuncts, the "Guidelines for Multiple Copies for Classroom Use" [pp. 3-4] are relevant. However, these guidelines address the practice of distributing photocopies to *every* course participant. Furthermore, the quantities specified for amount of text and total instances of photocopying constitute the *minimum* permitted by copyright law. Consequently, many academic reserve services adopt policies that seek to blend the spirit of the "Guidelines" with the criteria for fair use.

---

**How many photocopies of an item may be placed on reserve?** Bailey Library reserve services routinely accept single photocopies of copyright-protected chapters, articles, etc. [see p. 3, "Single Copies for Scholarly Use or Library Reserve"]. The photocopies are considered to be the instructor's property. Although copyright law prohibits libraries from systematic copying to enhance their collections, an instructor may provide duplicate photocopies (three at most) when a course is large enough to require more than one of an assigned photocopy. *If the Library or the instructor does not own an original, the instructor must provide written permission or indication of royalty payment for photocopies in excess of one.*

**How many photocopied items are permitted on reserve for a course?**

- **How many items from one source?** The amount of material should be reasonable in relation to the size of the source. Ordinarily, two chapters from a book or two articles from a periodical would be considered reasonable. Greater proportions of copyright-protected sources will be accepted for reserve only with the written permission from the copyright owner or indication of royalty payment.
- **How many items altogether?** There are several relevant considerations, including the four factors which determine fair use; the "Guidelines for Multiple Copies for Classroom Use;" and recent judicial history. Still, the quantitative threshold for exceeding fair use is problematic. However, current opinion on academic applications of the copyright law is consistent in regarding course packets derived from copyright-protected materials as outside the bounds of fair use. Consequently, course packets will not be accepted for library reserve without indication of the necessary permission or royalty payment.

Copies on Reserve must be marked: *NOTICE: This material may be protected by copyright law (Title 17 U.S. Code).* Special restrictions apply to music reserves. See sections on sound recordings and photocopying music.

*Unpublished Works.* Manuscripts, letters and other unpublished materials are likely to be protected by copyright regardless of age, even if they lack a notice of copyright. If you have any questions, you may consult the Library Director.

Unpublished works that belong to the Library may be reproduced in facsimile format for preservation purposes or for deposit for research use in another library or archives. Copies may usually be made for individual researchers under the law's Fair Use provisions.

## **AUDIOVISUAL MATERIALS**

### **Films and Video**

**Classroom Use:** Possession of a film or video does not automatically confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be "performed". For example, videocassettes from a video rental outlet usually bear a label that specifies "Home Use Only". However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

Section 110 (1) of the Copyright Act of 1976 specifies that the following is permitted: Performance or display of a work by instructors or pupils in the course of face-to-face

---

teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made...and that the person responsible for the performance knew or had reason to believe was not lawfully made.

Additional text of the Copyright Act and portions of the House Report (94-1476) combine to provide the following, more detailed list of conditions:

- They must be shown as part of the instructional program.
- They must be shown by students, instructors, or guest lecturers, either in a face-to-face setting or where students and teacher(s) are in the same building or general area. They must be shown only to students and educators.
- They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
- They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.
- Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.
- 

### **Use Outside the Classroom**

Besides use in classrooms, videocassettes and videodiscs that are owned by the College may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the Bailey Library Media Center. These videos may also be viewed at home (e.g., in a residence hall room), so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall lobby, require explicit permission from the copyright owner for "public performance" rights. The Library's online catalog includes the note "On-campus Public Performance Rights secured" for videos with that status. No fees for viewing a video are permitted even when public performance rights are obtained.

### **Copying Videotapes / Off-Air Recording of Broadcasts, Including Satellite TV.**

Copying videotapes without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price [Section 108 of the Copyright Act of 1976].

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes", an official part of the Copyright Act's legislative history, applies to most off-air recording:

Videotaped recordings may be kept for no more than **45 calendar days** after the recording date, at which time the tapes must be erased.

Videotaped recordings may be shown to students only within the **first 10 school days** of the 45-day retention period.

---

Off-air recordings must be made only **at the request** of an individual instructor for **instructional** purposes, not by staff in anticipation of later requests.

The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.

The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.

If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.

The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety.

All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Certain public broadcasting services (Public Broadcasting Service, Public Television Library, and Agency for Instructional Television) impose similar restrictions but limit use to only the seven-day period following local broadcast.

### **Network Distribution of Video**

The College negotiates for closed-circuit distribution rights, if possible, when purchasing access to satellite broadcasts or obtaining works on videotape. Without explicit permission for closed-circuit distribution, network transmission of a video is not permissible unless "Classroom Use" structures are met.

## **SOUND RECORDINGS**

### **Non-Music Recordings**

Cassettes or disks may not be copied unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use, however.

### **Music Recordings**

A single copy may be made for the purpose of constructing aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply. The downloading of music and entertainment video must comply with the *Code of Computer Resource Use* in the faculty, staff and student handbooks.

## **SLIDES AND PHOTOGRAPHS**

---

## Reproduction

Whenever possible, Hendrix will either purchase slides and photographs from authorized sources or will borrow from institutions which offer licensing for single-copy reproduction. In either case, further copying would be prohibited.

Occasionally, slides of copyrighted images that are needed for classroom purposes cannot be obtained ready-made in a timely fashion. If the process of slide making would fail to meet Fair Use requirements, the requestor must demonstrate that the copyright owner has granted permission.

## Display

Copyright ownership of slides and photographs encompasses control over display as well as reproduction. However, Section 110 of the Copyright Act of 1976 addresses the display of copyrighted slides and photographs in educational settings by allowing "display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction" so long as the copy of the artwork was lawfully made. Furthermore, the purpose of the display must be integral to the course.

## Computer Software

Hendrix College negotiates site licenses with software vendors whenever possible for software products that are selected for extensive use, since these arrangements provide the College community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

Software products that are not licensed to the College may also be used. However, copying is strictly limited except for backup purposes. Whether the software is transferred from the original to a hard disk or to an archival diskette, the backup copy is not to be used at all so long as the other copy is functional.

Libraries are permitted to lend software, but only for temporary use, not for copying. If the borrower transfers the software to a hard disk, the program must be deleted when the borrowed item is returned.

Copyright law is acknowledged to be inadequate in relation to the complexities of software use. EDUCOM, a nonprofit organization that supports the use of technology in education, launched the EDUCOM Software Initiative, which developed a statement of principle intended for adaptation and use by individual colleges and universities. It is here reproduced in full:

### THE EDUCOM CODE

**Software and Intellectual Rights.** Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgment, right to privacy, and right to determine the form, manner, and terms of publication and distribution.

Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments.

---

Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.