General Guidelines for Copyright Use

Copyright law grants to the author or originator the sole and exclusive privilege of creating multiple copies of literary or artistic productions and publishing and selling them. Copyright protection exists for original works fixed in any tangible medium of expression, including:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic work;
- pictorial, graphic, and sculpture work;
- motion pictures and other audiovisual works;
- sound recordings.

Exclusive rights of the copyright holder include:

- The right to reproduce the work in copies;
- The right to distribute the work the public;
- The right to make derivative works (i.e., modified version of the work);
- The right to display the work publicly;
- The right to perform the work publicly;

The rights listed above make it illegal to transmit copyrighted work over the Internet without the permission of the copyright holder, except when such transmission falls within the fair use guidelines.

Individuals and institutions may be able to obtain permission from the copyright holder to copy, display, or make other specific uses of works. In some cases, copyright works may be copied, displayed or otherwise used without permission from the copyright holder. The Copyright Act’s fair use provision allows for works to be used without permission for purposes such as teaching, research and scholarship. In addition, the Copyright Act specifically permits certain uses of copyrighted works in education settings, both within the classroom and in distance learning.

Fair Use

The fair use provision of the Copyright Act (Title 17, Section 107 of the U.S. Code) provides guidelines to determine whether a copyrighted work may be distributed or otherwise used without obtaining permission from the copyright holder. Fair use provides the legal basis for many educational uses of copyrighted materials.

Four factors must be considered in determining whether a particular use is a Fair Use:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work. A use of a factual or scholarly work is more likely to be considered fair than is a use of a work that is predominantly expressive (such as a work of fiction or a dramatic film).
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. The smaller the portion used, the more likely the use is to be considered fair.
4. The effect of the use upon the potential market for or value of the copyrighted work. A use is more likely to be fair if it does not have a substantial negative impact on the market for the work.

**Copying Materials for Instructional Use**

Under certain specifications in copyright law, a photocopy or other reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a photocopy or reproduction for purposes in excess of Fair Use, that user may be liable for copyright infringement.

Guidelines have been developed which allow an instructor to distribute photocopied materials to students in a class, without the publisher’s prior permission, upon compliance with these conditions:

- The distribution of the same photocopied materials does not occur every semester.
- Only one copy is distributed for each student, which must become the student's property.
- The materials include a copyright notice on the first page of the portion of material photocopied.
- The students are not assessed any fee beyond the actual cost of the photocopying.
- The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course.
- The effect of copying 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.

**General guidelines for Print and Electronic Reserve:**

- One chapter from a book.
- One article from a journal issue or newspaper.
- Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10% or less of the total length of the book or journal issue.
- A short story, short essay, or short poem.
- A chart, diagram, drawing, graph, cartoon, or picture.

**Copying Music Materials for Instructional Use**

Printed music materials and sound recordings are heavily regulated by the federal government. The following is not allowed under U.S. Copyright Law unless permission has been obtained:

- Copying to avoid purchase
- Copying music for any kind of performance (note emergency exception listed below)
- Copying without including a copyright notice
- Copying to create anthologies or compilations
- Reproducing material designed to be consumable such as workbooks, standardized tests and answer sheets
- Charging students beyond the actual cost involved in making copies.

The following are permissible under U.S. Copyright Law without obtaining permission:

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

3. Printed copies which have been purchased may be edited OR simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performance by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing oral exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

Materials in excess of Fair Use may still be used with appropriate permission and/or fees to the copyright holder.

Displaying Media on Campus

Users must secure public performance rights prior to showing a copyrighted work on campus, unless the work was purchased with public performance rights attached. The only exemption to this requirement is for classroom showings.

Classroom use or showing of a copyrighted video (VHS, DVD, Blu-ray) is permissible under the following conditions:
- The use must be by instructors or by students.
- The use is part of the curriculum for a specific course and is confined to members in a discrete course or other teaching activity.
- The entire audience is involved with the teaching activity.
- The showing takes place in a classroom or other instructional venue.
- The video is lawfully made; the person responsible has no reason to believe that the video was not lawfully made.

Fair use determinations depend on the specific facts of the use. In each instance, all of the Fair Use factors must be considered, and there is no simple formula for determining whether or not a particular use is Fair.

Fair Use of Multimedia, Illustrations and Sound Recordings

Faculty and students are permitted to copy portions or clips of existing video materials for educational use in the classroom for the purpose of incorporating the clips into a new production. Users do not have to obtain permission from the copyright holder as long as the clip does not constitute more than three minutes of the original work, or comprise the majority of the finished product. The opening screen of the project and any accompanying print material must include a notice that certain materials have been used under the Fair Use exemption of the U.S. Copyright Law.

Generally, up to 10 percent of a copyrighted musical composition can be reproduced, performed or displayed as long as it has been produced by an educator or student for educational purposes.
A single photograph or illustration may be used in its entirety as a general rule, but no more than five images by any one artist or photographer may be incorporated into any one multimedia program. No more than 10% of the photographs or illustrations in any one collection may be used in a multimedia program.

**DMCA and TEACH Act**
The *Digital Millennium Copyright Act (DMCA) of 1998* specifically addresses digital media, including DVDs, and copying restrictions. Section 1201 of the DMCA prohibits the circumvention of encryption on all digital media. It is a violation of the DMCA, for example, to make a digital copy of an encrypted DVD, because doing so would require breaking the copy protection. In November 2006, several *exemptions to the DMCA restrictions* were approved. One of the new exemptions is for multimedia works that are part of the library’s collection – compilations of portions of works are allowed for educational use in the classroom by media studies or film professors.

*Guidelines for Using Multimedia Sources*
Existing multimedia (music, lyrics, music videos, motion media, photographs, and illustrations) can be incorporated into a student or faculty multimedia project. The amount of the copyrighted work that a student may use in her/his educational multimedia project is restricted by specific portion limitations (see below). In particular, the portion limitations relate to the amount of copyrighted work that can reasonably be used in educational multimedia projects regardless of the original medium from which the copyrighted works are taken. Only two copies of the student educational multimedia project may be made, for reserve and preservation purposes.

Attribution and acknowledgement are required. Students must credit the sources of the copyrighted works, display copyright notice and ownership information, and include notice of use restrictions.

- Copyrighted Music, Lyrics, and Music Videos: up to 10%, but in no event more than 30 seconds.
- Motion Media Work: no more than 3 minutes.
- Photographs and Illustrations: no more than 5 images by an artist or photographer. For photographs or illustrations from a published collective work, no more than 10% or 15 images, whichever is less.

**TEACH Act & Safe Harbor Guidelines**
Section 110 of the Copyright Act specifies “safe harbor” provisions which allow the performance or display of a copyrighted work for educational purposes. Instructors or students in a face-to-face classroom were allowed to display or perform a copyrighted work as long as it supported the teaching activities of a nonprofit educational institution.

Until the TEACH Act was codified in 2002, the law was not clear regarding the use of works in distance education settings. The TEACH Act allows for *Section 110(2)* of the Copyright Act to extend “safe harbor” provisions to distance education. Thus, rather than relying on the fair-use defense to copyright infringement, educators can use the TEACH Act as a checklist to determine whether they are in violation of copyright law.

Checklist for TEACH Act requirements:

1.) The institution is a nonprofit accredited educational institution.
2.) The copyrighted materials are directly relevant to the course.
3.) Controls should be in place to limit access only to those students enrolled in the course.
4.) Only reasonable and limited parts of dramatic literary, musical, or audiovisual works are utilized.
5.) Control should be in place to limit the student’s ability to retain or further distribute the material.
6.) The material should comply with the DMCA which places a prohibition on the use of encryption circumvention methods and devices.

Under the TEACH Act, nondramatic literary and musical works (e.g., an essay, a song) and "reasonable and limited portions" of other works may be displayed or performed in class sessions that are transmitted online, subject to a number of specified conditions.

The following guidelines for distance learning are recommended:

1. The course material should be accessible only to students in the course, for the duration of the course, through a secure, password protected course Web site or through a password protected course management system.
2. The instructor should post a notice to students that copyrighted work is being made available through the course and that students may not distribute or use the material outside of the course. An example of such a notice follows: *United States law governs the use of copyrighted material. These laws prohibit reproduction of the material for purposes other than the intended instructional purposes of this course. Other uses, including commercial use and any further electronic distribution of the material, may constitute copyright infringement.*
3. Reasonable controls should be employed to prevent downloading and distributing the material by students. This can be done by using technology, such as streaming video, which allows for viewing but not downloading and distributing.
4. The material should be used only for instructional purposes as an integral part of the course session.
5. The copy of the material used must be lawfully made and lawfully acquired.
6. There is no exemption under the TEACH Act for the use of works that were specifically produced for the purpose of educational use. Examples of such materials are electronic course packs and electronic textbooks provided by publishing companies. This type of material may be used only in accord with the contracts or licenses entered into between the intellectual property holder and the user.
7. Materials may not be digitized if they are already available in a digital format. The use of newly digitized material must be protected technologically.
8. In the case of nondramatic literary or musical works (e.g., a poem or a song), the entire work may be transmitted in an online class session. Visual images that may be presented in a face-to-face class (e.g., a photograph or a painting) may also be transmitted online. But only "reasonable and limited portions" of other works, such as a motion picture, may be presented online.

As noted above, the TEACH Act applies only to class sessions, not to other aspects of distance learning courses (such as the distribution of background material to students). The Fair Use provisions apply to all aspects of distance learning, and in some instances may permit more extensive use of copyrighted materials than that specifically permitted by the TEACH Act.