



To: Legislative History

From: Alberta Comer, University Librarian

Subject: Updating Policy 7-013 to reflect best practices for interlibrary loan activities

Date: September 6, 2022

Policy 7-013 Copying of Copyrighted Works was last updated in 2014. That change addressed digital transmission of works for teaching purposes and replaced an outdated set of guidelines called the Educational Fair Use Guidelines with the general fair use provisions in the Copyright Act.

Similar changes were needed now to reflect more current practices of interlibrary loan (ILL) by replacing an outdated set of guidelines called the Commission on New Technological Uses of Works, referred to as CONTU. CONTU Guidelines were created in 1978 to assist librarians and copyright holders understand the amount of photocopying permitted under the Copyright Act for use in ILL transactions. These guidelines no longer reflect modern approaches to the exchange of scholarly content across libraries, particularly the “rule of five” guideline that places limits on the number of articles a library may borrow from a given journal title. Although CONTU was initially a useful framework for helping libraries comply with Section 108 of the Copyright Act, the guidelines were not intended to be “limiting or determinative in themselves [...] and they deal with an evolving situation that will undoubtedly require their continuous reevaluation and adjustment.” ([H.R. Rep. No. 94-1773 at 71-72 \(1976\)](#))

In the absence of any meaningful “reevaluation and adjustment” by the Commission over the following four decades, academic libraries find themselves needing to formulate updated ILL guidelines that preserve the intent of CONTU – to ensure ILL borrowing doesn’t exceed the statutory exemptions in the Copyright Act – while allowing flexibility and responsiveness to evolving standards in scholarly journal publishing.

A recent [white paper from the Association of Research Libraries](#) (an organization to which the libraries at the U of U belong) outlined best practices for formulating guidelines that assist ILL staff in systematically evaluating ILL activity to determine when borrowing transactions exceed established limits and royalty payments or the addition of a local subscription are appropriate.

The changes to Policy 7-013 reflect a move away from relying on CONTU Guidelines to evaluate the Libraries' compliance with the Copyright Act and a pivot toward relying on local analysis, expertise, and judgment to determine when ILL borrowing activity exceeds the threshold set by Section 108 of the Copyright Act.

New Workflow

University of Utah Libraries Interlibrary Loan departments will annually (or more frequently if desired) review ILL request data to compare against resource publication frequency and quantity, in order to determine if 'aggregate quantities to replace a subscription' have been met or exceeded. If it is determined that a library has obtained more items than are acceptable, royalties will be purchased by the responsible department to ensure copyright compliance.

Potential Budget Implications

The budget estimate from the University of Massachusetts at Amherst shows the potential impact:

Cost impact

	2020	2019	2018	2017	2016
Total Articles Borrowed outside Public Domain	10,114	9,156	9,033	11,624	11,317
Highest Frequency of ISSN	50	47	41	93	53
Average Frequency of ISSN	6.0	4.9	4.8	7.8	5.9
Paid to CCC	\$3,017.47	\$2,947.48	\$7,202.70	\$7,698.40	\$1,238.23
Paid to Reprints	\$6,497.66	\$21,288.82	\$25,850.85	\$26,974.31	\$28,290.53
Other licensing paid <i>(no data on Procard pre 2018)</i>	\$95.00	\$591.29	\$1,036.72	\$927.22	\$686.67
Total licensing/copyright paid	\$9,610.13	\$24,827.59	\$34,090.27	\$35,599.93	\$30,215.43

UMass Amherst

- Public research & land-grant university
- Approx. 1,300 faculty
- Over 30,000 students
- ILL typically processes per year:
 - 30,000+ Lending requests
 - 20,000+ Borrowing requests
 - 5,000+ Doc Del requests

Policy 7-013: Copyright Policy: Copying of Copyrighted Works

Revision #~~34~~. Effective date: ~~January 14~~[October 11, 2014](#)~~2014~~[2022](#)

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I. Purpose and Scope

A. Purpose:

To declare the University's policy regarding compliance with U.S. Copyright Law.

B. Scope:

This ~~Policy~~policy applies to all University personnel (including faculty, staff, and other employees), all students, and all academic and administrative units of the University.

II. Definitions

The following definitions apply for the limited purposes of this policy and any associated regulations. Terms used in this ~~Policy which~~policy that also are used within Title 17, United States Code (see 17 U.S.C., Section 101), are intended to have the same meaning for purposes of this ~~Policy~~policy as they have within that Code.

A. "Academic Use" means a use that relates to or is consistent with the mission of the University.

B. A. "Audiovisual ~~works~~—are Works" mean works that consist of a series of related images ~~which~~that are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

C. B. "Copy" or "Copies—~~are~~" means material objects, other than ~~phonorecords~~Phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. ~~The term "copies"~~Copy" or "Copies" includes the material object, other than a ~~phonorecord~~Phonorecord, in which the work is first fixed.

D. C. "Copyright ~~owner~~—Owner" means, with respect to any one of the exclusive rights comprised in a copyright, ~~refers to~~ the owner of that particular right.

E. D. ~~“Fair use—~~is Use” means a reasonable noninfringing use, including reproduction, of copyrighted material for such ~~Purposes~~purposes as criticism, comment, news reporting, teaching, scholarship or research, as determined from consideration of all relevant circumstances, including:

1. the ~~Purpose~~purpose or character of the use, e.g., for commercial ~~Purposes~~purposes or for nonprofit educational ~~Purposes~~purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

F. E. ~~“Literary works—~~are Works” means works, other than ~~audiovisual works~~Audiovisual Works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, ~~phonorecords~~Phonorecords, film, tapes, discs, or cards, in which they are embodied.

G. F. ~~“Phonorecords—~~are” means material objects in which sounds, other ~~that~~than those accompanying a motion picture or other ~~audiovisual work~~Audiovisual Work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. ~~The term~~ ~~“phonorecords”~~Phonorecords includes the material object in which the sounds are first fixed.

H. G. ~~“Publication—~~is” means the distribution of ~~copies or phonorecords of a work~~Copies or Phonorecords of a Work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute ~~copies or phonorecords~~Copies or Phonorecords to a group of persons for ~~Purposes~~purposes of further distribution, public performance, or public display,

constitutes ~~publication~~Publication. A public performance or display of a ~~work~~Work does not of itself constitute ~~publication~~Publication.

I. ~~H.~~ ~~“University—”~~ means, unless the context otherwise requires, ~~includes~~ the University of Utah institution and its officers and employees acting in the scope of their office or employment.

J. ~~I.~~ ~~“Work—”~~ means a ~~work~~Work of authorship that is capable of copyright protection, including ~~literary~~Literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, motion picture, ~~audiovisual~~Audiovisual, and sound recording ~~works~~Works.

~~J. Academic use— means a use that relates to or is consistent with the mission of the University.~~

III. Policy

A. General Principles --- Exclusive Rights, and Permissible Uses of Copyrighted Materials in Furtherance of the University's Academic Missions

1. University faculty and staff members and other personnel are expected to recognize and observe the exclusive rights of ~~copyright owners~~Copyright Owners.
2. This ~~Policy~~policy shall be construed liberally to carry out the dual purposes for which specific limitations upon these exclusive rights were written into the law:
 - a. to promote and facilitate ~~academic uses~~Academic Uses of copyrighted materials, and
 - b. to reduce incidences of copyright infringement.
3. Under federal law (17 U.S.C., Section 106), the ~~owner of copyright~~Copyright Owner has the exclusive rights to do and to authorize any of the following:
 - a. to reproduce the copyrighted ~~work in copies or phonorecords~~Work in Copies or Phonorecords;

- b. to prepare derivative ~~works~~Works based upon the copyrighted ~~work~~Work;
- c. to distribute ~~copies or phonorecords~~Copies or Phonorecords of the copyrighted ~~work~~Work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- d. in the case of ~~literary~~Literary, musical, dramatic, and choreographic ~~works~~Works, pantomimes, and pictorial, graphic, or sculptural ~~works~~Works, including the individual images of a motion picture or other ~~audiovisual work~~Audiovisual Work, to perform or display the copyrighted ~~work~~Work publicly.

B. Copying for Personal Use

1. The making of a single reproduction or phonorecording of copyrighted matter, including ~~works~~Works contained in the collections of the ~~university~~University libraries or archives or obtained by interlibrary loan, is permitted if:
 - a. ~~The~~the ~~University~~ reasonably believes that the reproduction is made without any purpose of direct or indirect commercial advantage;
 - b. the ~~copy or phonorecord~~Copy or Phonorecord will become the property of the user;
 - c. the ~~university~~University has no notice that the ~~copy or phonorecord~~Copy or Phonorecord will be used for any purpose other than private study, scholarship, or research; and
 - d. such reproduction or phonorecording, and the intended use to be made of it, constitute ~~fair use~~Fair Use.

C. Copying for Academic Use

1. The reproduction or phonorecording of copyrighted ~~works~~Works for ~~academic purposes~~Academic Use, such as criticism, comment, teaching, scholarship, or research, is permitted, if ~~fair use~~Fair Use standards for

permissible copying are observed. The factors to determine and document whether a use is fair include:

- a. ~~Purpose~~purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- b. ~~Nature~~nature of the copyrighted ~~work~~Work;
- c. ~~Amount~~amount and substantiality of the portion used in relation to the copyrighted ~~work~~Work as a whole; and
- d. ~~Effect~~effect of the use upon the potential market for or value of the copyrighted ~~work~~Work.

D. Digital Content and Transmission for Teaching

1. Digital content ~~which~~that includes any copyrighted ~~work~~Work may be digitally transmitted (shared) among course instructors and students enrolled in a particular course offered by the University, under the following conditions:
 - a. ~~The~~the use of the copyright ~~work~~Work constitutes a ~~fair-use~~Fair Use;
 - b. ~~Access~~access to the digital content is limited only to those students enrolled in the course for which the content has been obtained and only during the semester or other pertinent time period the course is offered; and
 - c. access to the digital content is controlled by password protection or an equivalent security measure.

E. Copying by University Libraries

1. General reserve desks may circulate single reproduction ~~copies~~Copies of library-owned copyrighted materials, provided that in the preparation of such circulating ~~copies~~Copies, library personnel do not exceed the standards for permissible copying under the law of ~~fair-use~~Fair Use.
2. With respect to interlibrary loans, university libraries as borrowing libraries shall keep and retain records of filled loan requests for three full years

following the end of the calendar year in which the requests were made ~~in order to insure that during said period of three years;~~

3. On a yearly basis, the library shall evaluate interlibrary loan requests based on requirements described in the Copyright Act of 1976 as Amended, 17 U.S.C. Section 108 to ensure that:

- a. ~~The~~the library did not request and receive more than ~~five~~a reasonable number of articles from any copyrighted periodical title published ~~within the five years immediately prior to the date of a request;~~ and
- b. the library did not request and receive more than ~~five copies~~a reasonable number of Copies of or from any given copyrighted ~~work, including a collection of copyrighted works,~~Work during the entire period such material was protected by copyright.

~~3. University libraries as lending libraries may make isolated and unrelated reproductions of a single copy of the same copyrighted materials on separate occasions as long as the libraries and their personnel are not aware of and have no reason to believe they are engaging in related or concerted reproduction of multiple copies.~~

~~4. University libraries shall refuse:~~

4. a. University libraries shall refuse to fill an interlibrary loan request where prior contractual obligations prohibit copying of such copyrighted material;

~~b. to honor a request from a borrowing library which has not verified on its order form that the request conforms to the copyright law and guidelines.~~

5. For the purpose of preserving and maintaining library collections, ~~university~~University libraries are permitted to make:

- a. facsimile reproductions of unpublished ~~works~~Works that are currently in the library-owned collection for purposes of preservation, security, or deposit in another library; and

- b. a ~~copy~~Copy of published copyrighted ~~work~~Work to replace a ~~work~~Work that is damaged, deteriorating, lost or stolen, if:
 - i. the library determines, after a reasonable effort, that an unused replacement cannot be obtained at a fair price;; and
 - ii. the ~~copy~~Copy includes a notice of copyright.

F. Prohibitions

- 1. In addition to compliance with applicable limitations on uses of copyrighted materials ~~as provided herein~~, faculty and staff and other University personnel are expected to refrain from ~~any of~~ the following actions:
 - a. Books and periodicals. Unless authorized in writing by the ~~owner of the copyright to any~~Copyright Owner of a book or periodical:
 - i. Copying may not be used to create, ~~or to replace~~, or substitute for,; anthologies, compilations,; or collections of copyrighted ~~works~~Works.
 - 1. Replacement or substitution may occur whether ~~copies~~Copies of various ~~works~~Works or excerpts ~~therefrom~~ are accumulated or are reproduced and used separately.
 - ii. ~~There shall be no copying of or from copyrighted works~~Copyrighted Works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests, test booklets and answer sheets, ~~and like consumable material~~ may not be copied.
 - iii. Copying may not:
 - 1. be used as a substitute for the purchase of books, publishers' reprints or periodicals; or
 - 2. ~~be~~ repeated with respect to the same item by the same course instructor in successive semesters or sessions without ~~fair use~~Fair Use documentation.

- iv. ~~No charge may be made to a~~ student ~~for a single copy of copyrighted materials beyond~~ may not be charged more than the actual cost of reproduction for a single Copy of copyrighted materials.

b. ~~2.~~ Educational uses of music

~~a.~~ a. Unless authorized in writing by the ~~owner of the copyright to~~ Copyright Owner of any music:

- i. Copying may not be used to create, ~~or replace~~ or substitute for, anthologies, compilations, or collective ~~works~~ Works.
- ii. ~~There shall be no copying of or from works~~ Copyrighted Works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests and answer sheets, ~~and like material~~ may not be copied.
- iii. Copying may not be used for the purpose of performance, except as permitted as a ~~fair use~~ Fair Use.
- iv. Copying may not be used as a substitute for the purchase of music, except as permitted as a ~~fair use~~ Fair Use.
- v. Copying is not permitted without inclusion of the copyright notice ~~which~~ that appears on the printed ~~copy~~ Copy of the music.
- vi. ~~b.~~ Users should also refer to ~~University~~ Rule 4-002A regarding illegal file sharing.

~~3.~~ Off-air recording

c. ~~a.~~ Off-air recording. Unless authorized in writing by the ~~owner of the copyright in any television program~~ Copyright Owner, television programs may not be regularly recorded in anticipation of instructor requests by any media services unit of the University.

d. ~~4.~~ Computer Programs (Software)

~~a.~~ Unless authorized in writing by the ~~owner of the copyright in any computer program~~Copyright Owner, copying of computer programs may not be used as a substitute for purchase.

G. Notices and Warnings to Prevent Copyright Infringement

1. A "Display Warning of Copyright" conforming to requirements specified by the Register of Copyrights shall be displayed prominently, in such a manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of each place on the University campus at which orders are accepted for the making of ~~copies or phonorecords~~Copies or Phonorecords of copyrighted materials.
2. An "Order Warning of Copyright" conforming to requirements specified by the Register of Copyrights shall be included on printed forms used by library patrons for ordering ~~copies or phonorecords~~Copies or Phonorecords of copyrighted materials.
3. All unsupervised reproducing equipment located in public areas on University premises shall display a notice that the making of a ~~copy~~Copy of copyrighted materials may be subject to the copyright law. The notice is to be affixed on the equipment so that it is readily apparent to a person making a copy.

H. Responsibilities for Notices and Enforcement

1. Posting notices and warnings: ~~responsibility~~The cognizant vice presidents are responsible for assuring that required notices and warnings are properly posted or affixed as required under this ~~Policy rests with the cognizant vice presidents~~policy.
2. Enforcement of Minimum Compliance Standards
 - a. ~~Development~~Line management personnel are responsible for the development of operating practices to assure compliance with minimum standards for copying ~~rests with line management personnel~~, under the direction of the cognizant vice presidents.

- b. ~~Operating practices~~ Relevant university operating units, under the direction of the cognizant vice president, are responsible for complying with legal requirements relating to performances of copyrighted musical, ~~literary~~ Literary, and dramatic ~~works shall be initiated by the relevant university operating units under the direction of the cognizant vice president~~ Works.
 - c. Payment of royalties for copying or performance of copyrighted ~~works~~ Works, where required in the course of ~~university~~ University business, shall be charged to regularly budgeted departmental funds.
 - d. In the event that a determination of copyright infringement by a court of competent jurisdiction results in the imposition of a final judgment imposing damages, costs, or other penalties upon the University, or upon any ~~university~~ University officer or employee for acts or omissions in the scope of employment, any resulting loss to the ~~university~~ University shall, except where otherwise required by law, be payable from funds budgeted for the use of the responsible operating unit if such loss was reasonably avoidable by compliance with this ~~Policy~~ policy.
3. Questions as to the interpretation of this ~~Policy~~ policy, or as to other aspects of copyright law, should be addressed to the Office of General Counsel or J. Willard Marriott Library.

~~Parts V-VII of this Regulation are regulations resource information—the contents of which are not approved by the Academic Senate or Board of Trustees and are to be updated from time to time as determined appropriate by the cognizant Policy Officer and the Institutional Policy Committee, as per Policy 1-001 and Rule 1-001.~~

Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.

IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources

- A. Policies/ Rules. [reserved]
- B. Procedures, Guidelines, and Forms. [reserved]
- C. Other Related Resources. [reserved]

V. References

- A. Policy 7-002: Patents and Inventions
- B. Rule 4-002A: Compliance with Illegal File Sharing Provisions

VI. Contacts

The designated contact officials for this regulation are

- A. Policy Owner(s) (primary contact person for questions and advice): University Librarian
- B. Policy Officer(s): ~~Chief~~[Senior Vice President for Academic Affairs and Senior Vice President for Health Sciences](#)

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

VII. History

- A. Current version. Revision ~~34~~.
 - 1. Approved by Academic Senate ~~January 6, 2014~~[August 29, 2022](#) and Board of Trustees ~~January 14, 2014~~[October 11, 2022](#) with Effective Date of ~~January 14~~[October 11](#), ~~2014~~[2022](#).
 - 2. Legislative History ~~for Revision~~[Revision 34](#).
 - ~~a. 3-~~[Editorial Revisions \[reserved\]](#)
 - ~~a. Editorially revised July 7, 2022 to move to current regulations template~~
- B. Previous versions.
 - 1. Revision ~~23~~. Effective January ~~16~~[14](#), ~~1978~~[2014](#).

[2. Revision 2. Effective January 16, 1978.](#)

C. Renumbering

1. Renumbered from Policy and Procedures Manual 6-5.