

Policy 6-6 Rev. 1
Date: November 8, 1984

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Subject: **COPYRIGHT POLICY: PERFORMANCE OR DISPLAY OF COPYRIGHTED WORKS**

I. PURPOSE

To declare the university's policy regarding compliance with provision of the Copyright Revision Act of 1976 concerning performance or display of copyrighted works.

II. REFERENCES

[PPM 6-5](#), Copyright Policy: Copying of Copyrighted Works.

III. DEFINITIONS

A. Seating capacity means:

1. The total number of seats permanently affixed in the facility where a musical attraction is performed, plus any temporary seats added for a particular performance; or
2. the total number of seats made available for a particular musical performance if the seating capacity of the facility has been altered to accommodate the performance, e.g., certain seats "roped off."
3. The total number of persons attending a particular performance if the site does not have formal seating, e.g., ballroom or outdoors.

B. Full-time Equivalent Enrollment (FTE) shall mean the sum of all full-time undergraduate and graduate students and the full-time equivalent of all part-time students calculated pursuant to the methods set forth and reported by the university to the Higher Education General Information Survey (HEGIS).

C. University premises means the buildings and grounds of the university campus, or of any other facilities leased, engaged, or controlled by the university, or of any organization (including any fraternity, sorority, social club or similar organization affiliated with the university) located off-campus but functioning under the university's auspices primarily for the benefit of the university's students. University "premises" shall also mean the facilities used to accommodate performances of music by persons and groups of persons organized or operating under the authority of the university, where the performance is offered or sponsored by a governmental agency or nonprofit organization.

D. Notice of objection is a written notice signed by the copyright owner or an authorized agent, for the purpose of preventing a noncommercial performance of a nondramatic literary or musical work. To be legally effective, the notice must be served on the person responsible for the planned performance at least 7 days prior to the performance, and must state the reasons for the objection.

E. Dramatic rights, frequently called "grand rights," is a term referring to the rights of a

copyright owner whose work is considered dramatic in nature, under which the owner has the exclusive right to perform, display, or present such copyrighted work publicly. Examples of dramatic works that are subject to dramatic rights include, but are not limited to, plays, ballets, operas, operettas, oratorios, pantomime, revues, musical comedies, sketches, and dramatic scripts designed for radio and television broadcast.

- F. Classroom means a place devoted to instruction, including a regular classroom, teaching laboratory, studio, workshop, gymnasium, training field, library, stage of an auditorium, or an auditorium itself when actually used for systematic instructional activities.
- G. Face-to-face teaching activities are defined as instructional performances and displays that are not transmitted by electronic means from other locations. This term does not require that the teacher and student be able to see each other, although it does require their simultaneous presence in the same general place. It excludes broadcasting or other transmissions from a remote location into a classroom, whether by radio or television on open or closed circuit.
- H. Exempt performance or display means a performance, presentation, or display for which permission from and/or payment to the copyright owner are not required.
- I. Nonexempt performance or display means a performance, presentation, or display that is subject to licensing and payment of royalties, and for which permission from the copyright owner or duly authorized agent is required.
- J. Public performance or display is a performance, presentation, or display at a place open to the public, or at any place where a substantial number of persons outside of the normal circle of a family and its social acquaintances is gathered. Performances or displays at "semi-public" places such as clubs, lodges, factories, summer camps and schools are considered public in nature.
- K. Perform means to recite, present, render, play, dance, or act, either directly or by means of motion pictures or other mechanical or electronic devise or process.
- L. Display means to show a copy of a work, in whole or in part, either directly or by means of film, slide, television image, or any other mechanical or electronic devise or process, and, in the case of a motion picture or other audiovisual work, includes the showing of individual images nonsequentially.
- M. Transmission program means a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.
- N. Ephemeral recording means a copy or phonorecord of a work made for the purpose of later transmission by a broadcasting organization legally entitled, either by license from the copyright owner or pursuant to statutory exemption, to transmit the work.
- O. Lawfully made copy means a copy obtained pursuant to permission from the copyright owner or a valid provision in a lease agreement, purchase contract, or other agreement.

IV. POLICY

A. Exempt Performance or Display of Copyrighted Works

1. Classroom Instruction

The exempt performance or display of copyrighted work is authorized on university premises if the performance or display is:

- a. in the course of face-to-face teaching activities;
- b. in a classroom; and
- c. in the case of a motion picture or other audiovisual work, is presented by means of a lawfully made copy.

This exemption does not permit the unauthorized reproduction of copies or phonorecords for purposes of classroom performances or displays in violation of the university's Copyright Policy, [PPM No. 6-5](#).

2. Instructional Broadcasts

- a. The exempt reading or presentation of a nondramatic literary or musical work, or the exempt display of a work by or in the course of an instructional broadcast transmission is permitted if the performance or display is:
 1. a regular part of systematic instruction;
 2. directly related and of material assistance to the teaching content of the transmission; and
 3. is made primarily for reception in classrooms.

The reading of a nondramatic literary work under this exemption does not extend to acting it out in a dramatic form without permission from the copyright owner. See paragraph c.

- b. In connection with a transmission authorized under paragraph a above, the cognizant operating unit of the university may make not more than 30 copies or phonorecords and may use such ephemeral recordings for transmitting purposes for not more than seven years after the initial transmission if:
 1. no further copies or phonorecords are reproduced from the authorized 30 copies originally made; and
 2. only one copy or phonorecord is preserved, exclusively for university archival purposes, and the rest are destroyed after the expiration of the seven year period.
- c. The performance of a dramatic musical work, such as opera or musical comedy, or of a dramatic work, motion picture, or other audiovisual work, by or in the course of a transmission is permitted only if permission from the copyright owner or duly authorized agent is obtained.
- d. The performance of a nondramatic literary work is permitted by or in the course of a transmission specifically designed for, and directed to, blind and other sight or hearing impaired persons if:
 1. the broadcast is made without any purpose of direct or indirect commercial advantage; and
 2. the broadcast is made through the facilities of KUED-TV, KUER-FM, or other noncommercial educational broadcast station, or a cable transmitting system.

- e. In connection with the transmission of a performance under paragraph d above, the cognizant operating unit of the university may make 10 copies of the transmission if:
 1. copies are retained and used solely by the university's operating unit (or by a nonprofit organization that is legally entitled to transmit such programs to the blind and deaf);
 2. the copies will be used solely for the same kind of transmission or for university archival purposes; and
 3. no charge is made for the use of the transmission or copies.
3. The exempt public performance of a nondramatic literary or musical work (except in a broadcast transmission to the public) is permitted if:
 - a. The performance is provided without any direct or indirect admission charge, and no compensation is paid to any of its performers, promoters, or organizers; or
 - b. all net proceeds derived through any direct or indirect admission charge are used exclusively for education, religious, or charitable purposes; and
 - c. the copyright owner has not served a "notice of objection" concerning the performance at least 7 day in advance.

B. Nonexempt Public Performances of Copyrighted Dramatic and Nondramatic Literary and Musical Works

1. Licensing Requirement

All public performances (other than exempt performances) which are presented on university premises or are sponsored by the university or any of its operating units or affiliated organizations are required to be licensed by the copyright owner or an authorized agent who holds the right to grant such license.

- a. University departments or operating units that either regularly or occasionally use copyrighted dramatic literary or musical works for nonexempt purposes must obtain individual permission from and are responsible for making payment to the copyright owner or authorized agent prior to presenting such dramatic literary or musical works to the public.
- b. The public broadcasting of nondramatic musical works and graphic works by KUER-FM and KUED-TV is authorized only to the extent such broadcasts are covered by license agreements with the copyright owners, including such agreements entered into by the Public Broadcasting Service (PBS) and National Public Radio (NPR) with BMI, SESAC, ASCAP, and Harry Fox.

2. University-wide License Agreements

With respect to public performances of nondramatic musical works on university premises, the university has entered into general licensing agreements with BMI, ASCAP, and SESAC. Under the terms of these agreements the university may permit the public nondramatic renditions of separate musical compositions in the repertory of each licensing society in live or recorded performances at concerts and

dances, parties at fraternities, sororities, or social clubs, during athletic events, in university cafeterias and eating places, and elsewhere on university premises.

3. Limitations in University-wide License Coverage

- a. The right to perform (live or recorded) nondramatic musical compositions is not assignable or transferable and is limited to the university's premises.
- b. The university's license agreements do not cover:
 1. Broadcasting, telecasting or transmission by wire or otherwise of renditions of musical compositions to persons outside of the university's premises.
 2. Performances by means of cable TV, cable radio, closed circuit radio or television stations, and jukeboxes.
 3. Performances of dramatic musical works, whether in the entirety or in part (one or more compositions), and whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation.
 4. Concert versions of dramatic musical works.

C. Payment of Fees

1. Fees required to be paid under the terms of license agreements shall be administered as follows:
 - a. The university's general license fee, based on full-time equivalent student enrollment (FTE), is the responsibility of the Central Administration and will be paid out of a special budgeted account.

D. Copyright Coordinator

1. A Coordinator of Copyright Compliance has been appointed in the Office of Executive Assistant to the President to assist university officers and directors of relevant operating units in complying with copyright laws and policies, and in fulfilling contractual requirements of applicable licensing agreements.
 - a. The Coordinator will administer a special budgeted account for the purpose of paying the general license fees for general use of music.
 - b. The Coordinator is responsible for establishing in cooperation with concerned operating units, a consolidated file of available concert programs and other lists of musical works performed at concerts and musical attractions under university auspices.

E. Reporting of Performances

Under the terms of the university's general license agreements, reports are to be submitted by relevant operating units as follows:

Programs or other lists of musical works which are prepared for distribution to an audience, or for the use or information of the operating unit must be forwarded to the

Copyright Coordinator when available.

F. Prohibitions

In addition to compliance with applicable limitations on performances or displays of copyrighted materials as provided herein, faculty and staff are expected to refrain from any of the following actions which are specifically prohibited by law:

Film or other audiovisual works. Unless the owner of the copyright or authorized agent of the copyright owner transfers the rights in a particular film or audiovisual work to the university, or to the individual faculty member or support staff employee, films rented, leased or purchased for classroom showing may not be:

- a. transmitted by television or other devices or processes;
- b. copied, recast, transformed, or adapted, in whole or in part, for any purpose;
- c. shown to an audience who has paid for admission; or
- d. permitted to be used by any other institution or individual.

V. PROCEDURES

A. Payment of Fees and Reporting

Responsibility for assuring required payment of general license fees, and for filing of required reports of musical programs, rests with Copyright Coordinator.

B. Enforcement of Contractual Obligations

Development of operating practices to assure meeting contractual obligations rests with line management personnel, under the direction of the cognizant vice presidents.

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