

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

I. Purpose and Scope

To declare the university's Policy regarding compliance with U.S. Copyright Law.

This 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

These definitions apply for the limited purposes of this Policy and any associated University Regulations. Terms used in this Policy which 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 as they have within that Code.

- A. Audiovisual works -- are works that consist of a series of related images which 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.
- B. Copies -- are material objects, other than 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" includes the material object, other than a phonorecord, in which the work is first fixed.
- C. Copyright owner -- with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.
- D. Fair use -- is a reasonable noninfringing use, including reproduction, of copyrighted material for such Purposes as criticism, comment, news reporting,

teaching, scholarship or research, as determined from consideration of all relevant circumstances, including (1) the Purpose or character of the use, e.g., for commercial Purposes or for nonprofit educational 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.

- E. Literary works -- are works, other than 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, film, tapes, discs, or cards, in which they are embodied.
- F. Phonorecords -- are material objects in which sounds, other than those accompanying a motion picture or other 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" includes the material object in which the sounds are first fixed.
- G. Publication -- is the distribution of 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 to a group of persons for Purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.
- H. University -- 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.
- I. Work -- means a work of authorship that is capable of copyright protection, including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, motion picture, audiovisual, and sound recording 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.
2. This 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 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 has the exclusive rights to do and to authorize any of the following:
 - a. to reproduce the copyrighted work in copies or phonorecords;
 - b. to prepare derivative works based upon the copyrighted work;
 - c. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
 - d. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to perform or display the copyrighted work publicly.

B. Copying for Personal Use

The making of a single reproduction or phonorecording of copyrighted matter, including works contained in the collections of the university libraries or archives or obtained by interlibrary loan, is permitted if:

1. The University reasonably believes that the reproduction is made without any purpose of direct or indirect commercial advantage;
2. the copy or phonorecord will become the property of the user;
3. the university has no notice that the copy or phonorecord will be used for any purpose other than private study, scholarship, or research; and
4. such reproduction or phonorecording, and the intended use to be made of it, constitute fair use.

C. Copying for Academic Use

The reproduction or phonorecording of copyrighted works for academic purposes, such as criticism, comment, teaching, scholarship, or research, is permitted, if fair use standards for permissible copying are observed: The factors to determine and document whether a use is fair include:

1. Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. Nature of the copyrighted work; Amount and substantiality of the portion used in relation to the copyrighted work as a whole; Effect of the use upon the potential market for or value of the copyrighted work.

D. Digital Content and Transmission for Teaching

1. Digital content which includes any copyrighted 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 use of the copyright work constitutes a fair use,

- b. 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 of library-owned copyrighted materials, provided that in the preparation of such circulating copies, library personnel do not exceed the standards for permissible copying under the law of 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:
 - a. The library did not request and receive more than five 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 of or from any given copyrighted work, including a collection of copyrighted works, 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:

- a. 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 libraries are permitted to make:
- a. facsimile reproductions of unpublished works that are currently in the library-owned collection for purposes of preservation, security, or deposit in another library; and
 - b. a copy of published copyrighted work to replace a 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 includes a notice of copyright.

F. Prohibitions

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:

1. Books and periodicals

Unless authorized in writing by the owner of the copyright to any book or periodical:

- a. Copying may not be used to create, or to replace or substitute for, anthologies, compilations or collections of copyrighted works.
Replacement or substitution may occur whether copies of various works or

excerpts therefrom are accumulated or are reproduced and used separately.

- b. There shall be no copying of or from 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.
- c. Copying may not:
 - i. be used as a substitute for the purchase of books, publishers' reprints or periodicals;
 - ii. be repeated with respect to the same item by the same course instructor in successive semesters or sessions without fair use documentation.
- d. No charge may be made to a student for a single copy of copyrighted materials beyond the actual cost of reproduction.

2. Educational uses of music

Unless authorized in writing by the owner of the copyright to any music:

- a. Copying may not be used to create, or replace or substitute for, anthologies, compilations or collective works.
- b. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching, such as
- c. workbooks, exercises, standardized tests and answer sheets, and like material.
- d. Copying may not be used for the purpose of performance, except as permitted as a fair use.

- e. Copying may not be used as a substitute for the purchase of music, except as permitted as a fair use.
- f. Copying is not permitted without inclusion of the copyright notice which appears on the printed copy of the music.
- g. [Users should also refer to University Rule 4-002A regarding illegal file sharing.]

3. Off-air recording

Unless authorized in writing by the owner of the copyright in any television program:

- a. Television programs may not be regularly recorded in anticipation of instructor requests by any media services unit of the University.

4. Computer Programs (Software)

Unless authorized in writing by the owner of the copyright in any computer program:

- a. 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 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 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 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 for assuring that required notices and warnings are properly posted or affixed as required under this Policy rests with the cognizant vice presidents.

2. Enforcement of Minimum Compliance Standards

- a. 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 for complying with legal requirements relating to performances of copyrighted musical, literary, and dramatic works shall be initiated by the relevant university operating units under the direction of the cognizant vice president
- c. Payment of royalties for copying or performance of copyrighted works, where required in the course of 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 officer or employee for acts or omissions in the scope of employment, any resulting loss to the 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.

3. Questions as to the interpretation of this Policy, or as to other aspects of copyright law, should be addressed to the Office of General Counsel or J. Willard Marriott Library.

[Note: Parts IV-VII of this Regulation (and all other University Regulations) 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.]

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

- A. Rules [reserved]
- B. Procedures [reserved]
- C. Guidelines [reserved]
- D. Forms [reserved]
- E. Other related resource materials [reserved]

V. References

Policy 7-002, Patents, Inventions and Copyrights.

Policy 3-112 Campus Printing Policy.

Rule 4-002A: Compliance with Illegal File Sharing Provisions of the HEOA (Higher Education Opportunity Act)

VI. Contacts

The designated contact officials for this Policy are:

- A. Policy Owner (primary contact person for questions and advice): University Librarian.
- B. Policy Officer: Chief Academic Officer.

These officials are designated by the University President or delegee, with assistance of the Institutional Policy Committee, to have the following roles and authority, as provided in University Rule 1-001:

"A 'Policy Officer' will be assigned by the President for each University Policy, and will typically be someone at the executive level of the University (i.e., the President and his/her Cabinet Officers). The assigned Policy Officer is authorized to allow exceptions to the Policy in appropriate cases.... "

"The Policy Officer will identify an 'Owner' for each Policy. The Policy Owner is an expert on the Policy topic who may respond to questions about, and provide interpretation of the Policy; and will typically be someone reporting to an executive level position (as defined above), but may be any other person to whom the President or a Vice President has delegated such authority for a specified area of University operations. The Owner has primary responsibility for maintaining the relevant portions of the Regulations Library... [and] bears the responsibility for determining -requirements of particular Policies... ." University Rule 1-001-III-B & E

VII. History

Renumbering: Renumbered as Policy 7-013 effective 9/15/2008, formerly known as PPM 6-5.

Revision History:

- A. Current version-- University Policy 7-013 Revision 3. Approved by Academic Senate: January 6, 2014. Approved by the Board of Trustees: January 14, 2014 , with the designated effective date of January 14, 2014.

Editorial revisions to current version: [Reserved]

Background information on Revision 3.

- B. Earlier versions.

Revision 2. Effective dates January 16, 1978 to January 13, 2014. Editorially revised Sept. 27, 1985.