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

I. Purpose

To declare the university's Policy regarding compliance with the Copyright Revision Act of 1976.

II. References

[Policy 7-002](#), Patents, Inventions and Copyrights.

[Policy 3-112](#) Campus Printing Policy.

III. Definitions

Terms used in this Policy and Procedure have the same meaning as Title 17, United States Code (see 17 U.S.C., Section 101), including:

- 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



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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 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.

IV. Policy

A. Notices and Warnings

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 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.

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. Copyrighted material to be reproduced under this paragraph shall be deemed reasonable as to amount and substantiality if it does not exceed the following guidelines:

- a. a chapter from a book; or
- b. an article from a periodical or newspaper; or
- c. a short story, short essay or short poem, whether or not from a collective work; or
- d. a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

C. Copying for Classroom Use

The reproduction or phonorecording of copyrighted works for classroom or teaching laboratory purposes, such as criticism, comment, teaching, scholarship, or research, is permitted, if all of the following minimum fair use standards for permissible copying are observed:

1. Multiple copies prepared for class distribution do not exceed one copy per student in the particular course.
2. The copying meets the tests of brevity described in the following guidelines:
 - a. With respect to poetry, "brevity" is deemed to mean a complete poem if less than 250 words and if printed on not more than two pages or, if from a longer poem, an excerpt of not more than 250 words.
 - b. With respect to prose, "brevity" is deemed to mean either a complete article, story or essay of less than 2,500 words, or 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 a minimum of 500 words. These limits are not violated by the completion of an unfinished line of a poem or of an unfinished prose paragraph.
 - c. With respect to illustrations, "brevity" is deemed to mean one chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
 - d. With respect to "special" works (i.e., certain works that combine language with illustrations, sometimes intended for children, and that fall short of the 2,500 words in their entirety), "brevity" is deemed to mean an excerpt comprising not more than two of the published pages and containing not more than 10% of the words found in the text itself.
3. The copying meets the tests of spontaneity as described in the following guidelines:

- a. The copying is at the instance and inspiration of the individual who orders the reproductions or phonorecords to be prepared and distributed.
 - b. 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 from the owner of the copyright.
4. The copying meets the cumulative effect tests described in the following guidelines:
- a. The copied material will be used in only one course offered in the college in which the instructor ordering the copies holds an academic appointment.
 - b. Not more than one short poem, article, story, essay or two excerpts may be copied from works by the same author, nor more than three from the same collective work or periodical volume, during the same semester or session.
 - c. Not more than nine instances of such multiple copying shall be ordered for any one course during the same semester or session.
 - d. The limitations stated in b and c do not apply to current new periodicals and newspapers and current new sections of other periodicals.

D. Copying of Music

Music may be reproduced by copy or phonorecord for educational use if the following minimum fair use guidelines are satisfied:

1. Emergency copying is permitted to replace purchased copies which are not available for an imminent performance, provided that purchased replacement copies shall be substituted in due course at the earliest reasonable opportunity.
2. For academic Purposes other than performance:
 - a. Single or 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 selection, movement or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per student.
 - b. A single copy of an entire performable unit (section, movement, aria, etc.) that is (1) confirmed by the copyright proprietor to be out of print or (2) unavailable except in a larger work, may be made by or for a teacher solely for the Purpose of scholarly research or in preparation to teach a class.

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 exists.
4. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound records owned by the university or an individual teacher for the Purpose of constructing aural exercises or examinations if the copy is to be retained by the university or individual teachers. (The foregoing pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

E. Off-air Recording

1. Off-air recording of any television broadcast (except pay television) by a media services unit of the university is permitted provided that:
 - a. the recorded program is retained by the department of the faculty member requesting it,
 - b. the recorded program is retained no more than forty-five (45) calendar days after the date of recording, and
 - c. upon conclusion of the retention period, all off-air recorded programs are erased or destroyed.
2. Off-air recording of television programs may be made only at the request of and used by individual instructors at the university provided that:
 - a. the recorded program is recorded no more than one time at the request of the same teacher;
 - b. the recorded program is used once in the course of relevant teaching activities and is repeated once only when instructional reinforcement is necessary within ten days of the taping;
 - c. recorded programs are shown in classrooms and similar places devoted to instruction within a single building, cluster or campus, or in the homes of students receiving formalized home instruction;
 - d. recorded programs are used only during the first ten days of the forty-five day retention period.

F. Computer Programs (Software)

1. The making of an exact copy or adaptation of a software package by a university department or unit which owns the copy is permitted provided that:
 - a. the new copy or adaptation is made as an essential step in the utilization of the software in conjunction with the

machine, or

- b. a new copy or adaptation is made for archival Purposes (not for use on any other machine) and will be destroyed when the original software is no longer in use.

G. 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 set forth in Section C, above.
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.

6. Permissible copying by university libraries does not extend to reproduction of copyrighted works solely in anticipation of loss or damage.

H. Prohibitions

In addition to compliance with applicable limitations on uses 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:

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 directed by higher authority;
 - iii. be repeated with respect to the same item by the same teacher in successive semesters or sessions.
- 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 workbooks, exercises, standardized tests and answer sheets, and like material.

- c. Copying may not be used for the Purpose of performance, except as permitted for emergency copying under Section D 1.
- d. Copying may not be used as a substitute for the purchase of music, except as permitted under Sections D 1 and D 2, above.
- e. Copying is not permitted without inclusion of the copyright notice which appears on the printed copy of the music.

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 computer programs may not be used as a substitute for purchase.

I. Exclusive Rights

- 1. University faculty and staff members are expected to recognize and observe the exclusive rights of copyright owners.
- 2. This Policy statement 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 educational 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.

[Note: Parts V–VI 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.]

V. Procedures

A. Posting Notices and Warnings

Responsibility for assuring that required notices and warnings are properly posted or affixed under Section IV A rests with the cognizant vice presidents.

B. Enforcement of Minimum Compliance Standards

1. 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.
2. 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
3. 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.
4. 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 and Procedure statement.
5. Questions as to the interpretation of this Policy and Procedure, or as to other aspects of copyright law, should be addressed to the Office of the President, extension 5113.

VI. Contacts:

The designated contact officials for this Policy are:

A. Policy Owner (primary contact person for questions and advice):

B. Policy Officer: Vice President for Research.

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

Approved: Institutional Council 1/16/78

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