

# Washington and Lee University Policy for the Use of Copyrighted Works

## I. Introduction

### A. PURPOSE

It is the intent of Washington and Lee University that all members of the University community adhere to the provisions of the United States Copyright Law. Each member of the University community must take some individual responsibility for copyright compliance, and these extensive guidelines flow from this premise. Conforming to this policy may in some cases result in additional costs to the student for course materials and some additional inconvenience and time delay in the preparation procedure of those materials. Members of the University community who willfully disregard the copyright policy do so at their own risk and assume all liability.

### B. WHAT IS A COPYRIGHT?

A copyright grants to its owner the right to control an intellectual or artistic creation, to prohibit others from using the work in specific ways without permission, and to profit from the sale and performance of the work. Under the current statute, copyright protection extends to not only copies of the written word and recordings of sound, but visual images such as photographs or illustration or animated images such as motion pictures or videotapes. It also extends to live performances that are taped as they are broadcast.

No protection is available for an idea/procedure, process, system, method of operation, concept, principle, or discovery, no matter how unique. Copyright protection is available only for an expression of the idea.

The owner of the copyright is granted five exclusive rights to ensure the opportunity to exploit the work for profit. These rights are: reproduction, distribution, adaptation, performance, and display.

The right to reproduce and distribute the work refers to the act of copying and distributing copies publicly. The adaptation right is the right to prepare derivative works such as new editions, translations, and condensation or new arrangements of musical composition. The right to perform the work publicly means to recite, render a play, or dance the work. Display is defined as the showing of a copy of work directly or by means of a television image. The performance and display right is limited to public performance and display.

The copyright law is violated whenever a third party exercises any of the above rights without authorization of the copyright owner or without having express permission to do so under the law. Even if a copyright owner is able to prove infringement, there are a number of limitations and exceptions to the exclusive rights granted under the copyright act. The statutory limitations cover a wide variety of uses but generally serve one of several purposes: scholarly inquiry which includes instruction, research criticism and newsworthiness; and performance and displays by educational, charitable, religious or government groups. Be aware that not all educational uses are fair uses. The limitation on the copyright owner's rights which provides the widest public exploitation of copyrighted work is known as the fair use exception. This is described in Section I.C.

### C. FAIR USE

Fair use is a legal principle that provides certain limitations on the exclusive right of copyright owners. The purpose of this policy is to provide guidance on the application of the fair use principle to faculty, staff, and students, who wish to copy copyrighted works under fair use rather than by seeking authorization from the copyright owners for non-commercial educational purposes. **NOT ALL EDUCATIONAL USES ARE FAIR USES.**

There is no simple test to determine what is fair use. Section 107 of the Copyright Act sets forth the four fair use factors which should be assessed in each instance, based on the particular facts of a given case to determine whether a use is fair use:

- 1) What is the character of the use?
- 2) What is the nature of the work to be used?
- 3) How much of the work will you use?
- 4) What effect would this use have on the market for the original or for permissions if the use were widespread?

All four factors must be weighed equally.

Factor 1: What is the character of the use?

Uses for non-profit, educational purposes, or single copies for non-profit educational or personal use are more likely to be a fair use. On the other hand, uses which are predominantly commercial are more likely to require permission and/or the payment of royalties.

Factor 2: What is the nature of the work to be used?

Materials that are primarily factual such as scientific information, mathematical equations, or historical data tip the balance in favor of fair use. When the work is creative or unpublished, the balance is tipped in favor of seeking permission.

Factor 3: How much of the work will you use?

Generally, if you use a small amount of the whole work, the balance is more likely tipped in favor of fair use. If you use a significant amount, the balance is tipped in favor of seeking permission.

Factor 4: What effect would this use have on the market for the original or for permission?

If the use tips the balance in favor of fair use after considering the first three factors, the fourth factor should not effect the results even if there is a market. On the other hand, the fourth factor may tip the balance, if the copy becomes the substitute for the original.

#### D. REVIEW OF COPYRIGHT POLICY

The Copyright Committee will meet annually to review this policy.

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## II. Photocopying Guidelines for Teaching and Research

Ordinarily, copying copyrighted material without the permission of the copyright owner is a violation of the exclusive rights of the copyright owner. The copyright act balances users rights by creating limited exemptions from these exclusive rights, such as allowing copying for face-to-face teaching or fair use. Under fair use, a teacher or researcher is allowed a rather limited amount of copying without the copyright owner's permission for purposes such as criticism, comment, news reporting, or teaching. Furthermore, there are some works of which copying is completely unrestricted, and other types of materials of which unauthorized copying is always forbidden.

### A. COPYING WHICH IS COMPLETELY UNRESTRICTED

#### 1. Published Works Which Were Never Copyrighted

Anyone may photocopy, without restriction, works published prior to 1989 which do not contain a notice of copyright.

A notice of copyright consists of the copyright symbol or the word "copyright," plus the first year of publication and the name of the copyright owner. Writings published without copyright notices prior to January 1, 1978 are not protected. Publication is defined to mean the distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or loan.

Notice requirements for works published between January 1, 1978, and February 28, 1989, were relaxed somewhat with respect to both the position of notices and the inadvertent omission of them. Effective March 1, 1989, the requirement that a work have a notice of copyright was abolished. Thus, any work created or published after March 1, 1989 is protected by copyright even if no notice of copyright is affixed.

#### 2. Published Works Whose Copyrights Have Expired

Anyone may photocopy, without restriction, published works on which the copyright term and any renewals have expired.

Copyrights dated 1920 (75 years prior to the current year) or later may or may not have expired, depending up on whether its owner renewed the copyright after the first term of protection. Thus it is recommended that copiers either assume the protection is still in effect, or ask the copyright owner or U.S. Copyright Office whether the work is still subject to copyright protection. Usually a publisher owns the copyright or knows the owner's location. If not, an owner can be located through the U.S. Copyright Office, Library of Congress, Washington, D.C., 20559, (202) 707-8350, <http://lcweb.loc.gov/copyright>.

### 3. U.S. Government Publications

U.S. government publications may be copied without constraint, except to the extent that they contain copyrighted work from other sources. When using copyrighted portions of U.S. government document, follow these guidelines.

### 4. State Documents

Unlike Federal documents, state documents may be copyrighted.

### 5. C-SPAN

C-SPAN grants educators and degree granting educational institutions the right to tape any C-SPAN programs without receiving prior permission from the network, as long as taping is for school use and not for commercial sale or political purposes. This liberal copyright policy allows teachers to air C-SPAN live, record programs (at school or at home) for later use, assign students to watch a program, or to create their own videotapes for classroom use.

Taped C-SPAN programs may be retained in perpetuity for future school use.

## B. COPYING WHICH IS PERMITTED AS FAIR USE

The concept of fair use is described in Section I.C.

In an effort to further clarify the limits of fair use, an ad hoc committee of publishers, authors, and educational institutions prepared an **Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions**. Higher education recognizes that these guidelines are inadequate and are generally considered to establish minimum permissible conduct under the fair use doctrine for unauthorized copying; however, these guidelines are not binding on the courts.

### 1. Single Copies

For teaching, including preparation for teaching, and for scholarly research, an instructor may make, or have made at his or her individual request, a single copy of:

one chapter from a book;  
one article from a periodical or newspaper;  
one short story, essay, or short poem;  
one chart, graph, diagram, drawing, cartoon, or picture from one book or periodical.  
2. Multiple Copies

For one-time distribution in class to students, an instructor may make, or have made, multiple copies if he or she:

makes no more than one for each student;  
includes the notice of copyright;  
makes no charge to the student beyond actual cost of photocopying;  
the copying meets the tests of "brevity" and "spontaneity" and "cumulative effect" as defined below:

a. The copying meets the test of "brevity":

Poetry: a complete poem of fewer than 250 words printed on no more than two pages, or an excerpt from a longer poem not to exceed 250 words;

Prose: a complete article, story or essay of less than 2500 words, or an excerpt from any prose work of not more than 1000 words or 10% of the work, whichever is LESS, but in any event a minimum of 500 words;

Illustrations: one per book or periodical issue;

"Special" works (poetry and/or prose that combines language and illustration, such as a children's book): the work may not be reproduced in its entirety; however, excerpts may be reproduced of no more than two pages, totaling less than 10% of the work.

AND

b. The copying meets the test of "spontaneity":

The copying is at the instance and inspiration of the individual teacher;

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;

Faculty members are expected to apply the test of spontaneity in good faith, and not use procrastination or poor planning as an excuse to claim fair use.

AND

c. The copying meets the "cumulative effect" test:

The material copied is for use in one course;

Not more than one short poem, article, story or essay or two excerpts of the above may be copied from the same author, nor more than three copies from the same collective work or periodical volume during one class term;

There shall be no more than nine instances of such multiple copying for one course during one class term.

In any case of photocopying that meets the above requirements for multiple copies, the original copyright notice must appear on all copies of the work.

### C. COPYING FOR WHICH PERMISSION MUST BE OBTAINED

The guidelines prohibit the following:

#### 1. Course Packs - Primary Course Materials

Copying shall not be used to create, replace, or substitute for, anthologies, compilations, or collective works. Such substitution copying is prohibited unless permission is obtained whether copies or various excerpts are accumulated as course packs or reproduced and handed out separately. Copying shall not be a substitute for the purchase of books or periodicals.

#### 2. Consumable Works

There shall be no copying of or from works intended to be "consumable" in the course of studying or teaching. These include workbooks, exercises, standardized tests, test booklets and answer sheets, and similar consumable material.

#### 3. Repetitive Copying

Copying of the same material by the same teacher from term to term is not legal without explicit permission.

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### III. Guidelines for University Libraries and Archives

Section 108 of the copyright law provides certain conditions under which libraries may reproduce copyrighted works upon the request of library patrons. It specifically addresses instances of allowable copying, reserve room use, and interlibrary loan.

#### A. REPRODUCTION BY LIBRARIES AND ARCHIVES

##### 1. Photocopy and Document Delivery Services to University Clientele

Although the University libraries do not provide any organized copying services for its clientele, it occasionally is necessary to reproduce copyrighted works to support the research and educational pursuits of the W&L community. The Copyright Act allows libraries or archives to reproduce or distribute no more than one copy of a work, provided the following conditions are met:

the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

the collections of the library or archives are open to the public;

the reproduction of the work includes a notice of copyright. All copies generated by the libraries must include formal notice, if it is available:

a. the word "copyright," or the abbreviation "copr."

b. the year of first publication

c. the name of the copyright holder.

If notice of copyright is unavailable, the library staff should use "This material may be protected by copyright law (Title 17, U.S. Code)."

a. Articles and Small Excerpts

The University libraries are authorized to reproduce and/or distribute a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a small part of any other copyrighted work. The copy may be made by the library where the patron makes the request, or by another library pursuant to an interlibrary loan.

The copy must become the property of the user, and the library or archives must have had no indication that the copy would be used for any purpose other than private study, scholarship, or research.

##### b. Out-of-Print Works

The libraries may reproduce and/or distribute a copy of an entire work, if it has been established that the library has made a reasonable effort to obtain an unused replacement and if one is found it cannot be obtained at a fair price. Such a determination will require inquiries to commonly-known trade sources in the United States, and ordinarily also to the publisher or other copyright holder.

##### c. Multiple Copies and Systematic Reproduction

The rights of reproduction and distribution under Section 108 extend to the isolated and unrelated production of a single copy of the same material on separate occasions, but do not extend to cases where the library or archives is aware or has substantial reason to believe that it is engaging in related or concerted reproduction of multiple copies of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group.

## 2. Replacement of Damaged Copy

The University libraries may reproduce a published work solely for the purpose of replacement of a copy or sound recording that is damaged, deteriorating, lost or stolen, if it has determined that an unused replacement cannot be obtained at a fair price.

## 3. Archival Reproduction

The libraries may reproduce and/or distribute a copy or sound recording of an unpublished work for the purposes of preservation and security, or for deposit for research use in another library or archives, if the copy is currently in the University libraries collections. This right extends to any type of work, including photographs, motion pictures and sound recordings.

## B. RESERVE ROOM USE OF COPYRIGHTED MATERIALS

Many college, university, and school libraries have established reserve operations for readings and other materials that support the instructional requirements of specific courses. According to the American Library Association **Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve**, the reserve unit functions as an extension of the classroom when it makes course readings available to students, and reflects an individual student's right to copy for personal scholastic use under the doctrine of fair use. When materials are included as a matter of fair use, reserve systems should constitute an ad hoc or supplemental source of information for students, beyond a textbook or other materials. If included with permission from the copyright owner, however, the scope and range of materials is potentially unlimited, depending upon the permission granted. The following provisions governing such use are drawn from the ALA **Model Policy**:

### 1. General Provisions

At the request of a faculty member, the University libraries may copy and place on reserve excerpts from copyrighted works in its collection in accordance with the guidelines governing classroom distribution (discussed in Section II of this document). In general, library employees may copy and/or accept copies of materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing educational activities which higher education requires, such as advanced independent

study and research. Audio cassettes, video cassettes, and other media titles may be placed on reserve if they are legal copies with appropriate copyright notice, e.g. date and creator.

## 2. Restrictions

### a. Single Copies Placed on Reserve

If the request calls for a single copy to be placed on reserve, the library may copy an entire article, an entire chapter from a book, or an entire poem.

The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, and its subject matter and level.

### b. Multiple Copies Placed on Reserve

Requests for multiple copies to be placed on reserve should meet the following guidelines:

the number of copies should be reasonable in light of the number of students enrolled, and the difficulty and timing of assignments;

the material should contain a notice of copyright as described in Section III. A. 1. above;

the effect of copying the material should not be detrimental to the market for the work (in general, the libraries should own at least one copy of the work).

### c. Course Packs

The University libraries will not accept course packs of readings for reserve unless the libraries receive proof from the faculty member that permission has been obtained from the copyright holder(s). See Section II.C.

### d. Repeated Use

Copies of copyrighted materials may not be retained on reserve for more than one term for any faculty member unless the library has proof that permission to reproduce and distribute copies in this fashion has been granted by the copyright holder and that said reproduction is in accordance with all copyright laws.

See Section IX.C for guidance in seeking permission for reserve use.

### e. Electronic Reserve

When requested by faculty members, the libraries will make copyrighted works available electronically for student use. Permission to mount the work electronically is necessary

before it is made available (if not covered by Fair Use). If requested, the libraries will seek this permission for the faculty member and pay reasonable royalty fees required for such mounting.

All copyrighted materials mounted by the libraries for reserve use will be restricted to campus Internet Protocol addresses. Publishers may also require that access to the materials be protected by password as well.

### C. INTERLIBRARY LOAN

The National Commission on New Technological Uses of Copyrighted Works (CONTU) prepared a set of guidelines governing copying and interlibrary arrangements in conjunction with Section 108 of the copyright law. Its provisions are as follows:

#### 1. Restrictions on Number of Copies

##### a. Periodicals

The Interlibrary Loan units should not submit, during any calendar year, more than five requests for copies of articles from a particular periodical title if those requests are from issues published within the last five years. No restrictions are placed on the number of copies of articles requested for materials exceeding five years of age. Requests in excess of the above limits are subject to the copyright permissions process and payment of royalties, where applicable.

#### 2. Record-Keeping Requirements

The requesting library must maintain records of all such requests and fulfillment of requests for the current calendar year plus three previous calendar years.

#### 3. Notice

All copies made by the Interlibrary Loan units and interlibrary loan order forms must bear a notice of copyright as described in Section III. A. 1. above.

### D. UNSUPERVISED REPRODUCTION EQUIPMENT

Equipment capable of reproducing copyrighted works are publicly available in unsupervised settings. In accordance with Section 108, a library is free from copyright infringement for unsupervised photocopying if the library posts a notice of copyright near all unsupervised photocopiers. The sign should say: "Notice: Making a copy may be subject to the Copyright Law." A similar notice should be placed on:

photocopiers  
printers  
microform printers  
computers

VCRs

tape recorders

scanners

all other equipment technically capable of reproducing copyrighted materials

A similar notice should also be placed on the campus network so that a user is warned about the possibility of using copyrighted material.

The office where equipment is located is responsible for posting the appropriate notice, obtainable from the Printing Center.

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## **IV. Guidelines for the Use of Films and Video**

### **A. CLASSROOM USE**

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be "performed". Section 110 (1) of the Copyright Act of 1976 creates an exception to the copyright holder's exclusive right of performance.

The "face-to-face" exception allows an educator to perform a work (including home use video) in class, as long as the following criteria are met:

they must be shown as part of the instructional program;

they must be shown by students, instructors, or guest lecturers;

they must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction;

they must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area;

they must be shown only to students and educators;

they must be shown using a legitimate copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a face-to-face classroom setting, may not be used for entertainment or

recreation, without the copyright holder's permission, whatever the work's intellectual content.

## B. USE OUTSIDE THE CLASSROOM

Besides use in classrooms, video cassettes and videodiscs that are owned by the University may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the libraries. These videos may also be viewed at home (e.g. in a dorm room) so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall or fraternity/sorority living room, require explicit permission from the copyright owner for "public performance" rights. No fees for viewing a video are permitted even when public performance rights are obtained.

The University maintains a public performance site license with Films, Inc. Lists of films covered by this license and forms to record use are available from the libraries and the Dean of Students Office.

## C. COPYING VIDEOTAPES/OFF-AIR RECORDING OF BROADCASTS, INCLUDING SATELLITE TV

Copying videotapes without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price.

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, **Guidelines for Off-the Air Recording of Broadcast Programming for Educational Purposes**, an official part of the Copyright Act's legislative history, applies to most off-air recording:

1. Videotaped recordings may be shown to students only within the **first 10 school days** of the 45-day retention period, set forth below.
2. Videotaped recordings may be kept for no more than **45 calendar days** after the recording date, at which times the tapes must be erased. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
3. Off-air recordings must be made only **at the request** of an individual instructor for **instructional** purposes, not by staff in anticipation of later requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.

6. The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety.

7. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

8. C-SPAN

See C-SPAN policy in Section II.A.5.

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## V. Guidelines for the Use of Images

The current state of understanding among visual resources people about the Conference on Fair Use guidelines is one of intense dissatisfaction, not with the idea of fair use per se, but with the fair use guidelines, specifically. The guidelines are regarded as having been drafted primarily for the protection of the vendors, and primarily in the context of printed materials rather than visual images. The controversy concerns the extent to which a photograph or slide of a public domain art work or scientific drawing is protected by copyright.

The proposed CONFU guidelines, the committee believes, place unnecessary restrictions on what is currently permitted as fair use. For example, none of the fair use factors puts time limits on use, but the guidelines do.

Given the lack of consensus on this matter among visual resources professionals, many issues remain unsolved. Since there is no consensus for using copyrighted images, the University recommends that copying be done pursuant to the fair use factors.

### A. DEFINITIONS

1. **Visual image** is a unique photographic representation of an object (e.g., an "original" 35 mm slide) or a photographic reproduction of an object ("duplicate" slide), usually issued in multiple copies. The term "visual image" is used here to refer to representations or reproductions of works of art (painting, sculpture, decorative or craft objects, graphics media, drawings, collages, mixed media, and electronic media) and architecture, and also includes maps, diagrams, charts, and scientific drawings. Images are typically surrogates for the represented works; their intrinsic value is primarily as documentation of the original object (e.g., a slide representation of the Mona Lisa, a photograph of the Eiffel Tower, a color reproduction of an anatomical chart).

2. **Image archive** is a collection of images, acquired and maintained by an organization such as a non-profit library, museum, or school. An image archive can be a collection of collections in different formats, of which slides and CD-ROMs are but two examples. Images in archives derive from numerous sources: from commercial vendors of images, from work-for-hire, from donation by amateur and professional photographers, and from copy photography.

3. **Copy photography** is making slides from reproductions in books or journals. This widespread and long-standing practice in the community has been a necessity for teaching, and frequently is a reason for the purchase of a book rather than an interference with the market for a book.

4. An **Electronic image** is a digital representation or reproduction of a photographic representation or reproduction of an object described above (under visual image). Electronic (digital) images are essentially the same as analog images. The content is the same; only the format for delivery and the ease with which they can be copied are different.

5. **Electronic image archives** is a collection of electronic (digital) images of art and architecture or other subjects that may be part of a larger image archives.

## B. FAIR USE AND IMAGE ARCHIVES

Visual images are typically sold by image brokers (commercial vendors) who have made photographic reproductions pursuant to a non-exclusive right with the creator of the object, or who have acquired a reproduction license to market images made from public domain objects owned or controlled by museums or corporations.

Visual images made from reproductions in books and journals for purposes such as teaching or research are understood to be fair use when photographic representations of the objects are no longer available or reasonably accessible from commercial vendors, the object's creator, or the owner of the work. The practice of reproducing images included with copyrighted text for the uses specified above is a longstanding practice in education and the subject of vigorous debate within the community, although there have been no cases addressing this practice.

Current practice recognizes the need to use large quantities of projected images in a classroom (a typical art history lecture requires an average of 25- 50 different images per class period). It is not uncommon for various images to be used the next time the course is offered. Multiple versions of the same object are commonly also presented. In practice, images are typically arranged in sequences or sets for comparison or contrast.

Assuming a fair use of copyrighted materials in providing images for the purposes listed above, permissions are not necessary. Permission is required only if the use of the copyrighted image is for other purposes, such as publication, or in circumstances where profit and/or commercial advantage is the motive for the use.

## 1. Image photocopying

The photocopying of images for classroom use or in the preparation of class assignments or papers is acceptable under the fair use guidelines.

## 2. Slides

a. Purchase, whenever possible. Subsequent duplication of purchased slides is not acceptable. b. Guidelines for copy photography, when a purchase is not possible: Follow fair use factors (see statement at the beginning re Fair Use Guidelines).

Make only one copy of a reproduction; making multiple copies is not acceptable.

Shooting every plate in a book is not acceptable.

Slides made in this way are to be used for educational purposes.

Once a slide has been added to the slide collection of an academic department, by either purchase or copy photography, it becomes the property of Washington and Lee University. If a slide is loaned, it may not be duplicated in any form. It is implicit in the lending that the borrower agrees not to authorize duplication or reproduction of these slides and assumes all responsibility for that restriction.

## 3. Clip art

Clip art is sold to be copied; use it, taking care to note any limitations that accompany it (e.g., some clip art may be used in printed works, but the license expressly forbids digital distribution; therefore, it may not be used to liven up web pages).

## 4. Fair Use and Electronic Images

a. Fair use is inadequately defined for images in general, and thus poorly understood for most transmissions of images.

b. During transmission, a copy of the image is made. This adds another layer to the already multi-layered ownership issues surrounding an image. Is the image of an artwork the property of the creator (if still under copyright) or the photographer or the repository maintaining it? This is never as self-evident as it is with a text object such as a book or a journal article.

c. It is in the immediate and long range interests of Washington and Lee that digitized images be readily and inexpensively available for teaching and research.

## 5. Copying which is permitted:

a. One or a small number of images is retrieved from a large collection and used so that the intrinsic value of the original collection is in no way diminished.

b. Use of "thumbnail-size" images, for no purpose other than as a reference or as a mnemonic device.

6. Copying which requires permission:

a. Using without compensation any sizable archive that someone else has collected with considerable expenditure of time, energy, and money.

b. Acquiring images that are free or quite inexpensive, and then charging an unreasonable amount for their use.

7. Notice

a. Check for the copyright symbol ("copyright" or "<©>") and the name of the copyright owner (which should be attached directly on, under, or around a digital work); it should be visible to anyone who will be using the excerpted material. Works 1989 - present, may be under copyright whether or not a copyright symbol is present; no copyright symbol has been required since 1989.

b. Put the copyright symbol, name, and date on each copy, even if the material is only being used once for a class presentation or project; this is important in case you change your mind and decide to use material for commercial or extended purposes; you would then have a record of the copyright information and of when and where you found the material.

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## **VI. Guidelines for Use of Copyrighted Music**

In 1975, **Guidelines for Educational Use of Music** was developed by a group of music educators and publishers to clarify the intent of the copyright law with respect to music and to amplify the concept of fair use. These guidelines were submitted to Congress and became part of the legislative history of the 1976 Copyright Act.

### **A. REPRODUCTION OF COPYRIGHTED MUSIC**

1. Copying Which Is Permitted:

a. 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.

b. Multiple copies of excerpts of works may be made for academic purposes other than performance provided that such excerpts do not comprise a performable unit, provided that such copying does not exceed 10% of the work and no more than one copy per student is made.

c. 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 altered or lyrics added.

d. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or instructor.

e. 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 instructor for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or instructor. This pertains only to the copyrights of the music itself and not to any copyright which may exist in the sound recording.

## 2. Copying For Which Permission is Required:

a. Copying to create or replace or substitute for anthologies, compilations, or collective works.

b. Copying of or from works intended to be "consumable" in the course of study or teaching such as workbooks, exercises, standardized tests, answer sheets, and like material.

c. Copying for the purpose of performance, except as noted in "permissible uses" above.

d. Copying for the purpose of substituting for the purchase of music except as noted in "permissible uses" above.

e. Copying without inclusion of the copyright notice which appears on the printed copy.

## B. RECORDING

The copyright owner has the exclusive right to reproduce copyrighted works in phono records. Limited exceptions to this right are set forth in the guidelines as outlined above. Once phono records of a non-dramatic musical work have been distributed to the public in the U.S. under authority of the copyright owner, any other person may obtain a compulsory license to record the work by complying with certain procedures and by payment of the royalty as provided in 17 U.S.C. §115. This compulsory license requirement applies when a music educator wishes to record a student performance as part of the learning process and distribute copies of the recording within the community. Bear in mind that the first recording of a work and its distribution in recorded form requires the consent of the copyright owner.

**C. PREPARATION OF DERIVATIVE WORKS** The copyright owner has the exclusive right to make arrangements of a piece of music. However, the guidelines describing what is considered to be fair use of music material set forth the following exceptions:

1. 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 altered or lyrics added;

2. The compulsory license for recording includes the privilege of making a musical arrangement of a work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work. This privilege is not meant to extend to "serious" compositions.

D. DISTRIBUTION The one exception to the exclusive right of the copyright owner to distribute copies is set forth in the compulsory license requirement relative to phono records at Section B. above.

E. PERFORMANCE The copyright owner has the exclusive right to control the performance of a musical work. However, music educators and others have special needs which are addressed in 17 U.S.C. §110 as limitation on the exclusive right of performance. The following uses are NOT infringements:

1. Performance of any copyrighted work by instructors or students in the course of face-to-face teaching activities, in a non-profit educational institution, in a classroom or similar place devoted to instruction.
2. Performance of non-dramatic literary or musical work on closed circuit television to other classrooms or to disabled students for teaching purposes only if the transmission is part of the systematic instructional activities of a non-profit educational institution, and only if the performance is directly related and of material assistance to the teaching content of the program.
3. Performance of a non-dramatic literary or musical work at a school concert if there is no purpose of direct or indirect commercial advantage, no fee or compensation paid to the performers, promoter or organizers, and no admission charge; if there is an admission charge, all of the proceeds must be used only for educational or charitable purposes; and the performance may not take place if the copyright owner objects in writing seven days before the performance.
4. Performance of non-dramatic literary or musical works or of dramatic-musical works of a religious nature, in the course of services at places of worship or at a religious assembly.

F. LICENSES The University maintains licenses with the performing rights organizations for the use of much copyrighted music on campus. These licenses are on file in the Treasurer's Office.

## VII. Guidelines for the Use of Computer Software

A. USE OF COPYRIGHTED COMPUTER PROGRAMS (SOFTWARE) Copying not only entails duplicating software but includes transferring a program from one medium (CD, floppy, hard disk for example) or transmitting over a local area network, or a long distance line.

Unauthorized reproduction, distribution, or adaptation of computer programs is governed by the same rules as other end-uses and will be considered infringement unless it constitutes fair use under §107 of the Copyright Act or is exempted under §117 which is explained below.

**Please note** that the guidelines for classroom copying in not-for-profit educational institutions are explicitly limited to books and periodicals, and do not encompass other types of copyrighted works, including computer programs.

### 1. Copying

A University department purchasing a program may adapt the program so it can be used on the office machines. This use qualifies for the §117 exemption; the owner of a lawfully acquired copy of a computer program is permitted to make an adaptation of a computer program "as an essential step in the utilization of the computer program in conjunction with the machine and it is used in no other manner."

A department may not obtain a single machine license for a program and then make it available via a department network or through the campus-wide computer system that any number of students, faculty, and staff may access simultaneously either on or off campus. Despite the non-commercial purpose of such distribution, because the entire program is reproduced, there is a serious commercial effect caused by lost license fees and pirated copies.

### 2. Lending

Under §109(b)(2)(A) of the Copyright Act, a computer program may be loaned for non-profit purposes by nonprofit libraries. All copies that are loaned by a library must contain a warning of copyright in accordance with the requirements prescribed by the Register of Copyrights.

A library may lend a book with the supplemental software on a disk in the book pocket, so long as this is lent for a non-profit purpose and the library affixes to the book or the disk the required copyright warning.

### 3. Archiving copies

Under §117 of the act, libraries and schools may lawfully make one copy under the following conditions: one copy is made, the original copy is stored. If the possession of

the original ceases to be lawful, all copies must be destroyed. Only the number of copies purchased or licensed may be in use at any given time.

#### 4. Licensing

Many computer programs are acquired under licenses rather than purchases.

License agreements govern many of the activities that a user of a computer- related work may conduct. These agreements are contracts between the owner or vendor of the copyrighted work and the user of the work. Contracts are governed by state law. The terms of the license agreement may broaden or narrow the rights that a user has under the Copyright Act. Such agreements usually specify restriction on the user's rights to copy the software, to access electronic information, to download information. It may specify what constitutes legitimate uses of information. If the University licenses rather than purchases a computer program, then the user should refer to the license agreement or contact the copyright owner before making an adaptation.

#### 5. Areas of caution

- a. Use of software may be restricted to a particular computer at a particular site. You should not assume that simultaneous use of a server copy of software is permitted under single copy license restrictions.
- b. Employees may not make copies of software licensed or owned by the University for their personal use except where explicitly allowed by the software vendor. (Check with University Computing.)
- c. If the University supplies licensed software to students in the course of instruction in a classroom, then sufficient licenses must be held by the University.
- d. Shareware is easily identifiable through explicit statements and software documentation. Unless the explicit statements identify the software as shareware, the user should assume that it may NOT be duplicated. Like other information, software not containing a copyright notice is not necessarily in the public domain.

### B. COPYRIGHT AND THE WEB

Copyright law applies equally to works electronically available on the web. The fact that you can view, download or print text and graphics does not mean that the material is unprotected. Nor does it mean that you are free to disseminate that work to others either electronically or in hard copy.

#### 1. Reading, watching or listening

There is controversy at the moment about the extent to which you can read, watch or listen to a copyrighted work without permission and/or royalties and whether fair use applies.

If a work is copyrighted and you have authorized access, you are free to read, watch or listen. There are some convincing arguments that fair use applies even if your use is not authorized.

## 2. Downloading

When you download material to your computer you make an electronic copy. Unless your copy falls within fair use, you may not make this copy without authorization of the copyright owner. The owner may have given permission to download.

You may be searching a commercial database that charges a fee for searching and may also authorize you to download or print the material. Such authorization is usually limited to a single copy for your personal use.

## 3. Home Pages

- a. You may put your own created text, graphics, audio or video on your web page.
- b. If you use an item created by someone else whose copyright has not expired, then you should seek permission.
- c. By creating a web page you probably have given implied permission to others to link to your web page. You may link to another URL because links are like street addresses and may not be copyrightable. However, a list of links may be copyrightable under a compilation copyright and if you copy the entire list to your web page, it probably is a copyright violation.

<a href="#">Washington &amp; Lee University</a>	<a href="#">Leyburn Library</a>	<a href="#">Table of Contents</a>	<a href="#">Top</a>
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## **VIII. Departmental and Printing Services Responsibilities**

Departmental offices and University Printing Services are required to abide by this policy with respect to duplication of copyrighted materials. Printing or photocopying in excess of fair use, without permission, is prohibited. Departmental and Printing Services staff should be familiar with the University copyright policy and the fair use guidelines, and are authorized to make a good faith application of the guidelines to individual instances of photocopying. These requirements pertain to all manner of duplication, including

course packets, departmental copying, and individual copying, and apply to both single and multiple copies.

## **IX. How to Obtain permission**

If it is determined that a particular instance of copying will require the permission of the copyright owner, staff or faculty members should request permission or have it requested on their behalf. Bear in mind that permission must be obtained each time an item is used unless a blanket permission has been secured. Complete documentation of all permissions, denials, and other correspondence is to be kept for a period of three years.

### **A. OBTAINING PERMISSION DIRECTLY**

Persons wishing to procure their own permissions should apply directly to the copyright owner. Faculty members are responsible for seeking permission to use copyrighted material for their own publications or presentations. Communication of complete and accurate information will facilitate the request; the Association of American Publishers has offered the following suggestions. A sample permissions request letter appears in the [Appendix](#) to expedite the permissions process.

To determine who owns the copyright on the material, consult the copyright page and/or the acknowledgement page for information on copyright ownership. If the address of the publisher does not appear with the material, it may be obtained in such publications as **Books in Print**, the American Bookseller's Association's **Publisher's Directory**, **The Literary Marketplace**, **The International Literary Marketplace**, or **Ulrich's International Periodicals**, available in the University libraries.

When requesting permission to duplicate, include a complete bibliographic citation of the material to be used, including title, author and/or editor, copyright or publication date, volume and/or issue and/or edition of the publication, chapter or article title, exact page numbers of the material to be used, and number of copies to be made. Also indicate the type of use to be made of the copies (e.g., course material). Remember to allow sufficient lead time for the publisher to respond to the request.

Permission must be obtained each time an item is used, unless a blanket or extended permission has been secured. (Because rights to copyrighted material are frequently transferred, it is often difficult to secure permission for more than a one-time use.) When requesting permission for subsequent uses of copyrighted material, remember that the rights holder will not necessarily be able to process your request any more quickly than the first time, and allow sufficient lead time accordingly.

### **B. OBTAINING PERMISSION FOR COURSE PACKS AND OTHER COURSE MATERIALS**

A copyright permissions service exists on campus to assist University faculty in obtaining permission to copy copyrighted material for course pack and other course related

purposes. Faculty members must provide sufficient information in a timely manner. Persons interested in utilizing this service should call Karen Lyle, 8798.

### C. OBTAINING PERMISSION FOR RESERVE

If the faculty member can easily secure permission, for example from a colleague, he/she should do so and keep a written record. If the faculty member has not sought permission, the libraries will seek permission if the work is registered with the Copyright Clearance Center (CCC). The libraries will assume the expense of reasonable royalty fees paid to the CCC. For works not registered with the CCC, the libraries will attempt to obtain permission for materials to be placed on reserve if the faculty member provides sufficient information in a timely manner and if the copyright holder's address is available through directories in the libraries.

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## X. Policy Violations and Compliance With the Digital Millennium Copyright Act

### Policy/Law Violations:

Violations of this Policy for the Use of Copyrighted Works will be disciplined – up to and including discharge or dismissal from the University. Network/computing use privileges may be suspended or terminated for policy violations and/or violations of law, specifically including but not limited to infringement of copyright under the Digital Millennium Copyright Act (DMCA). Repeat violations of the DMCA will result in the permanent termination of access to the University network by the repeat infringer.

### Procedure for Notification of Alleged Copyright Infringement Involving the University Network:

#### 1) Immediate Action by Designated Agent

If the University's Designated Agent receives a Notice of Infringement, s/he will review the Notice to ensure that it meets all the elements of notification under 17 U.S.C. § 512(c)(3), and will notify: 1) the Office of General Counsel; and 2) the University's Chief Technology Officer, or it's Information Security Officer (collectively referred to as "CTO/ISO").

#### 2) Expeditious Action by CTO/ISO

a) *Suspension of Network Access*

The CTO/ISO will act expeditiously to suspend the network access of the student, employee, or faculty member who is identified (through IP address or other means) in the Notice of Infringement.

b) *Removal of Allegedly Infringing Material*

If the allegedly infringing material resides on the University network itself (as opposed to being available only when the alleged infringer is connected to the network), the CTO/ISO will also act expeditiously to remove or disable access to the alleged infringing material from the University network.

3) Formal Notice to Alleged Infringer

a) *Letter to Alleged Infringer*

After consultation with the Office of General Counsel and the CTO/ISO, the Designated Agent will notify the alleged copyright infringer by written letter that his/her network account has been suspended.

b) *Right to File Counter-Notification*

The letter will advise the alleged infringer that if he/she has legitimate copyright ownership of the work, has obtained permission from the copyright holder, is protected under the “fair use” doctrine, or has any other reason to insist that the alleged infringement is not in fact infringement, he/she has the right to file a counter-notification.

c) *Cease-and-Desist Statement*

The letter will indicate that unless the alleged infringer files a counter-notification with the Designated Agent, the alleged infringer’s access to the University network will remain suspended until the alleged infringer signs a Cease-and-Desist Statement indicating that he/she: 1) has removed the allegedly infringing material from his/her computer, and 2) will not engage in such copyright infringement on the University network in the future.

d) *Further Legal Penalties and/or University Discipline*

The letter will also indicate that the alleged infringer may still be subject to criminal/civil liability for infringement, and that the matter may be referred to the appropriate University disciplinary body, supervisor, or administrator as a violation of University Policy.

4) Counter-Notification Procedure

a) *Initial Counter-Notification*

If a counter-notification is filed by the alleged infringer, the Designated Agent will promptly provide a copy of such notice to the individual who filed the original Notice of Infringement, and inform such individual that the University will restore access and/or the disputed material itself in 10 to 14 business days following receipt of the counter-notification.

b) *Restoration of Access/Materials – Legal Action Filed*

The University will then restore the alleged infringer’s network access between ten to fourteen business days (not sooner, nor later) from receipt by the University of the counter-notice, unless the Designated Agent

receives additional notice from the person who filed the original Notice of Infringement that such person has filed a court action seeking to restrain the alleged infringer's acts of infringement.

**Procedure for Repeat Infringers:**

Upon receipt of a Notice of Infringement that involves a student, employee, or faculty member who has previously either: 1) admitted to infringement through signing a Cease-and-Desist Statement, or 2) after filing a valid counter-notice, was determined in a court proceeding to have nonetheless engaged in infringing activity, the University will engage in the same process as above, with the following exception. Once the alleged infringer: 1) admits to having infringed (a second time) by signing a second cease-and-desist statement, 2) files a counter-notification, but is nonetheless ultimately held by a court to have committed infringement in the second instance, or 3) fails to either sign an additional cease-and-desist statement or file a counter-notification, such user's access to the University network will be **permanently terminated**.

Amended May 2007 to add Section X per approval of Provost Tom Williams.