

## Policy GA-CMI-PO1 Copying Copyrighted Materials

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#### **I. Policy Statement Regarding Copying Copyrighted Materials**

It is the policy of the University of Texas System and its component institutions to adhere to the requirements of the United States Copyright Law of 1976, as amended, (Title 17, United States Code, hereafter, the 'Copyright Act') including ensuring that the restrictions that apply to the reproduction of software are adhered to and that the bounds of copying permissible under the fair use doctrine are not exceeded. Accordingly, all faculty and staff to The University of Texas System and its component institutions should adhere to the following policy guidelines:

- A. Only copyrighted materials are subject to the restrictions in this Policy Statement. Uncopyrighted materials may be copied freely and without restriction. Because a copyright notice is not required for copyright protection of works published on or after March 1, 1989, most works (except those authored by the United States Government) should be presumed to be copyright protected, unless further information from the copyright holder or express notice reveals that the copyright holder intends the work to be in the public domain. With regard to works published prior to March 1, 1989, a copyright notice generally is required in order for them to be copyright protected.
- B. Copyrighted software may be copied without the copyright owner's permission only in accordance with the Copyright Act. Section 117 of the Act permits the making of a single archive back-up copy. Most software, however, is licensed to the user and the terms of the license agreement may give the user 'permission' to make copies of the software in excess of the single archival copy permitted by the Copyright Act. Each software license agreement is unique, and its terms and provisions will vary from product to product and from company to company. As a result, the extent of the user's rights to copy licensed software beyond that which is permitted under the Copyright Act cannot be determined without reference to the user's license agreement with the software copyright owner. It is the policy of The University of Texas System that any copying or reproduction of copyrighted software on system or component institution computing equipment must be in accordance with the Copyright Act and the pertinent software license agreement. Further, faculty, staff and students may not use unauthorized copies of software on System or component owned computers or computers housed in System or component institution facilities.

- C. Copyrighted materials may be copied without the copyright owner's permission where such copying constitutes 'fair use' under the Copyright Act. Section 107 of the Act identifies four factors to be considered in determining whether a use is fair. While this statutory 'balancing test' is the ultimate test of fair use, Congress has endorsed certain Guidelines that provide more concrete guidance to educators as to the boundaries of permissible copying. These Guidelines are set forth in Appendix I hereto. Generally, copying is permissible as fair use to the extent it is permitted by the Guidelines set forth in Appendix I. In some cases, copying not within the Guidelines of Appendix I nevertheless may constitute fair use; however, before proceeding on that assumption, the appropriate administrative office of the component institution should request the advice of the Office of General Counsel.
- D. In order to copy materials, including software, where:
1. the materials are copyrighted;
  2. copying extends beyond what is permitted by license or the boundaries of Guidelines in Appendix I;
  3. advice of the Office of General Counsel has not been sought; permission must be obtained from the copyright owner. The information in Appendix II may be helpful in obtaining such permission.
- E. When permissible under State law and procedures, The University of Texas System will arrange for the defense of any faculty or staff member against charges of copyright infringement for any copying:
1. where the copying is in accordance with the provisions of valid software license agreement;
  2. where the copying is within the Guidelines of Appendix I;
  3. where the permission of the copyright owner has been obtained; or
  4. where the Office of General Counsel has issued a written opinion as to the permissibility thereof. Otherwise, the faculty or staff member will be personally responsible for the defense of an action for copyright infringement.
- F. Component institutions shall be responsible for posting notices reflecting this policy at photocopying stations which may be used for reproducing copyrighted materials, e.g., departmental copy rooms and libraries, and at or near all computer stations that may be used for reproducing copyrighted software. A suggested form of notice is set forth in Appendix III. Photocopy guidelines concerning books and periodicals should appear at all photocopy machines; copying guidelines concerning music should be placed at photocopy machines in music facilities.
- G. For educational uses of music, the guidelines set forth in the legislative history of ' 107 of the Copyright Act generally are applicable. With respect to emergency copying permitted under those guidelines, special implementing details are set forth below.

## II. Appendix I

### Guidelines

#### A. SINGLE COPYING FOR TEACHERS

A single copy may be made of any of the following or any part thereof by or for any faculty or staff member at his or her individual request:

1. A chapter from a book;
2. An article from a periodical or newspaper;
3. A short story, short essay or short poem, whether or not from a collective work; or
4. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

#### B. MULTIPLE COPIES FOR CLASSROOM USE

Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the faculty giving the course for classroom use or discussion, provided that:

1. The copying meets the tests of Brevity and Spontaneity:
  - a. Brevity  
Poetry: A complete poem if less than 250 words and if printed on no more than two pages or an excerpt of no more than 250 words from a longer poem.  
Prose: All or any portion of a complete article, story, or essay of 2,500 words or less, or an excerpt from any prose work of no more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words. Each of the numerical limits stated above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.  
Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.  
'Special' works: Certain works in poetry, prose, or in 'poetic prose' which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Numerical limits notwithstanding, such 'special works' may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof, may be reproduced.
  - b. Spontaneity  
The copying is at the instance an inspiration of the individual teacher, and 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.

2. Cumulative Effect

- a. The copying of the material is for only one course in the school in which the copies are made.
- b. No more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- c. There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

3. Each copy includes a notice of copyright.

C. PROHIBITIONS TO A. AND B. ABOVE

1. Copying may not be used to create or to replace or substitute for anthologies, compilations, or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
2. There shall be no copying of or from works intended to be 'consumable' in the course of study or of teaching. These include workbooks, exercises, standardized test, test booklets, answer sheets, and like consumable material.
3. Copying may not: substitute for the purchase of books, publisher's reprints, or periodicals; be directed by higher authority; or be repeated with respect to the same item by the same teacher from term to term.
4. No charge may be made to the student beyond the actual cost of the photocopying.

D. EMERGENCY COPYING OF MUSIC

1. Permissible Uses

- a. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
- b. For academic purpose other than performance, 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 section, movement, or aria but in no case more than 10 percent of the whole work. The number of copies may not exceed one copy per student.

- c. For academic purpose other than performance, a single copy of an entire performable unit (section movement, aria, etc.) that is confirmed by the copyright proprietor to be out of print, or unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
- d. Printed copies that have been purchased may be edited or simplified, provided that the fundamental character of the work is not distorted, that the lyrics (if any) are not altered, and that no lyrics are added, if none exist.
- e. 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 individual teacher.
- f. A single copy of sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (The permitted copying pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

## 2. Prohibitions

- a. Copying to create or to replace a substitute for anthologies, compilations, or collective works.
- b. Copying of or from works intended to be 'consumable' in the course of study or of teaching such as workbooks, exercises, standardized test, answer sheets, and like material.
- c. Copying for the purpose of performance, except as in D.1.a above.
- d. Copying for the purpose of substituting for the purchase of music, except as in D.1.b. above.
- e. Copying without inclusion of the copyright notice which appears on the printed copy.

- 3. It is U.T. System policy that an immediate order for the purchase of replacement copies is to be placed on a one for one basis and all reproduced copies of the musical work are to be destroyed upon receipt of the ordered copies. Any other method of calculating the number of replacement copies to be ordered, such as an inventory taken after the performance, is unacceptable. It is expected that staff and faculty

routinely involved with performances will emphasize planning procedures so as to avoid use of emergency copying on a routine basis.

### III. **Appendix II**

#### Permissions

##### A. **OBTAINING PERMISSION BY LETTER REQUEST**

1. When multiple photocopying of copyrighted material is not within the Guidelines and The University of Texas System Office of General Counsel has not given written authorization otherwise, staff or faculty members should request permission. Communication of complete and accurate information to the copyright owner will facilitate the request. Although alternatives may be acceptable, the Association of American Publishers suggests that the following information be included to expedite the process:
  - a. Title, author and/or editor, and edition of materials to be duplicated;
  - b. Exact material to be used, giving amount, page numbers, chapters, and if possible, a photocopy of the material;
  - c. Number of copies to made;
  - d. Use to made of duplicated material;
  - e. Form of distribution (classroom, newsletter, etc.);
  - f. Whether the material is to be sold;
  - g. Type of reprint (ditto, photocopy, offset, typeset).
2. The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be obtained from The Literary Marketplace (for books) or Ulrich's International Periodicals (for journals), both published by the R.R. Bowker Company. For purposes of proof and to define the scope of the permission, it is important that the permission be in writing.
3. The process of considering permission request requires time for the publisher to check the status and ownership of rights and related matters and to evaluate the request. It is advisable, therefore, to allow sufficient lead time. In some instances the publisher may assess a fee for permission, which may either be passed on to students who receive copies of the photocopied material or be paid by the requesting component as an ordinary expense.
4. **SAMPLE LETTER REQUESTING PERMISSION TO COPY**  
Material Permissions Department  
Hypothetical Book Company

500 East Avenue  
Chicago, IL 60601

Dear Sir/Madam:

I would like permission to copy the following:

Title: Knowledge of Good, Second Edition

Copyright: Hypothetical Book Co., 1965, 1971

Author: Frances Jones

To be duplicated: Chapter 10 (photocopy enclosed)

Number of copies: 50

Distribution: The material will be distributed to students in my class, and they will pay only the cost of the photocopying.

Type of reprint: Photocopy

Use: The chapter will be used as supplementary teaching materials.

I have enclosed a self-addressed envelope for your convenience in replying to this request.

Sincerely,

Faculty Member

Office of Copyright Permissions

Box 00000 Arlington, TX 76019

Metro 817-272-0000

Fax 817-272-0000

**B. OBTAINING PERMISSION BY TELEPHONE**

If occasional time exigencies obviate the usefulness of the prior request letter, then the infrequent use of telephone permissions is acceptable. The person receiving permission should make written notes of the time and date of the call, the name of the person authorizing copy, the extent of permission granted, and request and obtain a follow-up permission letter from the copyright proprietor.

**IV. Appendix III**

Suggested Notice

**COPYRIGHTED NOTICE**

Unauthorized copying of copyrighted works, including without limitation books, periodicals, software, and musical works, may be unlawful and may infringe the copyright of the copyright owner. Copying is subject to The University of Texas system's policy statement concerning 'Copying of Copyrighted Materials' Any use of these computer or duplicating facilities by students, faculty or staff for the unauthorized duplication of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.