

Title: Copyright Compliance & Fair Use Guidelines for Library & Classroom	Policy No.: ADM 1.13	Date: 2/4/09 Rev.:
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Areas Affected: BSMSON employees, students, and guest	Page 1 of 7
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**PURPOSE:**

This policy's purpose is to facilitate lawful use of copyright-protected materials in the library and classroom

- 1) by providing a summary of U.S. copyright law as it relates to the use of such materials (both physical and digital) in the classroom and library
- 2) by providing guidelines and procedures for obtaining copyright permission to use these works
- 3) by informing individuals of accepted "fair use" interpretations.

U.S. copyright law contains many gray areas, and the goal of this policy is to provide school administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers classroom issues such as photocopying and online and distance education. It also covers library uses of print and electronic reserves, ILL, and document delivery guidance. **This policy provides practical advice and procedures on copyright-related matters; however, it is not a substitute for legal advice, and proper legal advice should be obtained when necessary.** The Bon Secours Richmond Health System will be creating a copyright compliance policy in the future, at which time the school's policy will be cross-referenced to that system-wide policy. At present, questions or issues concerning copyright compliance may be forwarded to the school's librarian.

**DEFINITIONS:**

**COPYRIGHT**

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If an individual are not a copyright holder for a particular work, as determined by the law, an individual must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic

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uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

## PROTECTED WORK

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that an individual may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform and publicly display their works. These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years.

## FAIR USE

A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (whether for commercial or nonprofit educational use)
2. The nature of the copyright-protected work
3. The amount and substantiality of the portion used
4. The effect of the use upon the potential market for the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

To avoid confusion and minimize the risk of copyright infringement, the school interprets the following situations as fair use:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
- Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning's paper is directly relevant to that day's class topic. This would generally cover

one time use in only one semester.

- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

If an individual's use does not meet the above criteria and the work is protected by copyright, the individual probably needs to obtain permission to use the work from the copyright holder or its agent.

\*\* **SEE:** Indiana University (2006). Checklist for fair use. Retrieved February 2, 2009, from <http://www.copyright.iupui.edu/checklist.htm>

#### **POLICY:**

All BSMSON employees, students and guest will observe the U.S. Copyright Act (title 17, U.S. Code) based upon the guidelines offered below. Questions about usage of copyright materials should be directed to the School librarian. Violations of the Act are to be reported to the Dean's office.

ORIGINAL

## GUIDELINES

### Classroom Handouts

Based on fair use analysis, classroom handouts fall into two categories; one that requires permission and one that does not. If the handout is a new work for which an individual who could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, an individual may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, an individual must obtain copyright permission to use the work.

### Reserves

If the school library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the library must obtain copyright permission.

### Photocopying In the Library

It is permissible to photocopy copyright-protected works in the school library without obtaining permission from the copyright owner, under the following circumstances:

- **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the school library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research. As recommended by Section 108 of the Copyright Act, the library must display the register's notice at the place library users make their reproduction requests to the library.
- **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the school library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
- **Replacement of lost, damaged or obsolete copies.** The school library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)
- **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by an individual's library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship and research, and the library must display the register's notice at the place library users make their reproduction requests to the library.

### **Photocopying for Students**

The school library may make reproductions for library users (students, faculty, etc.), provided the following criteria are met:

- The library makes one reproduction of an article from a periodical or a small part of any other work.
- The reproduction becomes the property of the library user.
- The library has no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- The library displays the register's notice at the place library users make their reproduction requests to the library.

### **Photocopying by Students**

Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

A frequently used compliance issue is articulated in the following resource:

*Guidelines for classroom copying of books and periodicals.* (2001). Retrieved

February 2, 2009, from <http://www.utsystem.edu/ogc/intellectualproperty/clasguid.htm>

### **Document Delivery Services**

It is important to maintain a distinction between ILL and Document Delivery Services (DDS). Photocopying for DDS requires copyright permission.

### **Interlibrary Loan (ILL)**

The school library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. The school follows the CONTU guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many under CONTU. If the articles or items being copied have been obtained through a digital license, an individual must check the license to see under what terms and conditions, if any, interlibrary loan is permitted.

### **Distance Education and Course Management Systems**

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude educational institutions have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (BlackBoard). The copyright requirements for TEACH and BlackBoard postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, an individual must obtain copyright permission.

For additional resources to help clarify copyright compliance and fair use in digital environments:

Copyright basics. Retrieved February 2, 2009, from  
<http://www.copyright.com/Services/copyrightoncampus/basics/teach.html>

Copyright Clearance Center. (2008). Exceptions for the use of materials in an educational setting. Retrieved February 2, 2009, from  
[http://www.copyright.com/Services/copyrightoncampus/basics/fairuse\\_edu.html](http://www.copyright.com/Services/copyrightoncampus/basics/fairuse_edu.html)

Copyright Clearance Center. (2008). Using course management systems: Guidelines and best practices for copyright compliance. Retrieved February 2, 2009, from  
<http://www.copyright.com/media/pdfs/Using-Course-Management-Systems.pdf>

Copyright Clearance Center. 2008. Using electronic reserves: Guidelines and best practices for copyright compliance. Retrieved February 2, 2009, from  
<http://www.copyright.com/media/pdfs/Using-Electronic-Reserves.pdf>

Rhoads, J., & White, C. (2008). Copyright law and distance nursing education. *Nurse Educator*, 33(1), 39-44.

### **OBTAINING COPYRIGHT PERMISSION**

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is best to obtain permission in writing (including e-mail) and to ensure that the individual has a copy of each permission form or letter. The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that an individual wish to use the materials.

### **FREQUENTLY ASKED QUESTIONS**

[http://www.copyrightoncampus.com/compliance/policy\\_sample.asp](http://www.copyrightoncampus.com/compliance/policy_sample.asp)

Once an individual has identified the materials an individual wants to use and determined that copyright permission is required, an individual must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work. The Copyright Office of the Library of Congress may be of assistance in locating a copyright owner if the work is registered. Note, however, that copyright is automatically granted to all works upon their inception and that registration with the Copyright Office is not required. There are two primary options for obtaining permission to use the work. An individual may contact the copyright holder directly or an individual may contact Copyright Clearance Center. There is an established process for obtaining copyright permission through Copyright Clearance Center. See the librarian for regarding the School's account with Copyright Clearance Center ([www.copyright.com](http://www.copyright.com)).

### **Information Need for a Permission Request**

The copyright holder or its agent will require the following information in order to provide an individual with permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which an individual wish to reproduce the item (research, commercial, educational, etc.)

- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

### **1) Copying of Books and Periodicals**

The Copyright Act of 1976 allowed for provision of multiple copies of an article for classroom use in a non-profit educational setting, within established parameters. The 2001, "Guidelines for Classroom Copying of Books and Periodicals" (by the University of Texas System's Office of General Counsel Website) provides a reputable and easy-to-read adaptation of these guidelines.

<http://www.utsystem.edu/ogc/intellectualproperty/clasguid.htm>

### **2) Fair Use**

In 1998, the United States Patent and Trademark Office's Conference on Fair Use (CONFU) offered guidelines for the "fair use" of electronic materials in not-for-profit educational settings. Though these guidelines never become law, they are used extensively for reference. A reputable and easy-to-read adaptation of these guidelines is from Indiana University (2006), "Checklist for Fair Use".

See the PDF version at

<http://www.copyright.iupui.edu/checklist.htm>

### **3) Update on Copyright Law for Transmission (Digital Materials): TEACH ACT**

In 1998, the Digital Millennium and Copyright Act (DMCA) became law. The purpose of this law was to elucidate copyright protections in the electronic arena. "Fair Use in the Electronic Age", a statement developed and endorsed in 2001 by representatives of the major academic research and professional associations, describes what these organizations feel represents fair use. The TEACH Act, made law in 2002, represents practical applications of the DMCA. North Carolina State University has created extensive and highly regarded information resources on the TEACH Act, at

<http://www.provost.ncsu.edu/copyright/toolkit/>

### **Online Resources for Clarifying Compliance**

1) The Association of Research Libraries:

[http://www.knowan\\_individualcopyrights.org/resourcesfac/kycrbrochure.shtml](http://www.knowan_individualcopyrights.org/resourcesfac/kycrbrochure.shtml)

2) The Office of Legal Affairs for the University System of Georgia's Website gives numerous explanatory scenarios relevant to the questions faculty might have regarding "fair use" of copyrighted works.

<http://www.usg.edu/legal/copyright/#part2b1>

In addition, they provide a WEB page titled "Guide to the TEACH Act"

[http://www.usg.edu/legal/copyright/teach\\_act.phtml](http://www.usg.edu/legal/copyright/teach_act.phtml)

**\*BSMSO's policy, in large part, directly reflects the template offered freely by the Copyright Clearance Center, at**

[http://www.copyrightoncampus.com/compliance/policy\\_sample.asp](http://www.copyrightoncampus.com/compliance/policy_sample.asp)