



## Copyright Policy

### Introduction

The purpose of this policy is to provide guidelines to the ENMU community regarding the lawful uses of copyrighted works made available within or through the library. Copyright protection applies to the reproduction, alteration, distribution and performance of a variety of creative works, including printed material, sound and video recordings, visual artwork and software. This policy has been updated to include information since the passage of the [Digital Millennium Copyright Act](#) (DMCA), the [Sonny Bono Copyright Term Extension Act](#) and the [Teach Act](#).

### Copyright Basics

Copyright is a form of legal protection for authors of original works. Any original expression is automatically copyright-protected as soon as it is fixed in a tangible form (paper, disk, computer file, video recording, etc.). Neither publication nor registration is essential for a work to be copyright protected, e.g., most of the material available on the Internet is copyright protected, even if no © notice or warning is displayed. While certain uses of copyrighted material are exempt from infringement liability, as discussed below, any use in excess of permitted exemptions requires that permission first be obtained from the copyright owner. Permission may involve payment of a royalty fee to the copyright owner. When in doubt, always inquire about the status of an item or obtain permission.

**Exemptions:** Items that are not copyright-protected may be freely used without permission. These include:

- works not fixed in a tangible medium of expression (non-recorded oral performances or improvisational speeches, etc.)
- works that lack originality, wherein they consist entirely of information that is common property (standard calendars, lists of names, etc.)
- works in the public domain
- most government publications
- facts
- ideas, processes and methods, etc., that are described within copyrighted works

In some cases, permission to use material, for prescribed purposes, is granted within the work itself, e.g., at the end of a web page, in the front matter of a book or a freeware software agreement.

## **Duration of Copyright**

Copyright protection depends upon when an item was created or published. Copyright term limits are as follows:

- If the item was published before January 1, 1978, and it did not satisfy the conditions for securing federal copyright under the Copyright Act of 1909, it remains in the public domain under the 1976 Copyright Act.
- If the item was created before January 1, 1978, but not published, the copyright term is life of the author plus 70 years, or until December 31, 2002; for works published on or before December 31, 2002, the term of copyright will not expire before December 31, 2047.
- If the item was created and published before January 1, 1978, the term of copyright is 75 years (28 original + 67 renewal), unless the copyright was never renewed in which case it would fall into the public domain after 28 years.
- If the item was created on or after January 1, 1978, and the work is fixed in a tangible medium of expression (paper, disk, recording, etc.), the term of copyright is life of the author plus 70 years for an individual copyright holder. For works of corporate authorship (when the copyright is owned by the employer of the author), the term is 95 years from the date of publication or 120 years from date of creation, whichever comes first.
- Any copyright still in its renewal term at the enactment of the Sonny Bono Term Extension Act shall have a copyright term of 95 years from the date the copyright was originally secured.

## **Section 106**

The Copyright Act, section 106 gives copyright owners the exclusive right to do and to authorize others to do the following:

- reproduce copies of the work (photocopies, video/audio tapes, phonorecords, etc.)
- prepare derivative works based on the copyrighted work (includes alterations, additions, translations or the creation of a new work from an existing work)
- distribute copies of the work (includes publication, sales, rental, lease, loan)
- publicly perform the work if literary, musical, dramatic, choreographic, motion picture, pantomime, sculptural or audiovisual (includes showing audiovisual works publicly)
- publicly display the work if literary, musical, dramatic, choreographic, sculptural, graphic or pictorial (includes individual images of a motion picture or other audiovisual work)
- publicly perform sound recordings by means of a digital audio transmission

Although the rights named above are exclusive to copyright owners, they are not absolute. Nonprofit educational institutions whose primary focus is to support research and instructional activities of educators and students for noncommercial purposes are permitted limited uses that are exempt from infringement liability.

## Permitted uses:

- **Section 107** permits the making of [Fair Use](#) copies
- **Section 108** permits reproduction by libraries and archives, if:
  - there is reproduction and distribution of one copy or phonorecord only, to be made without purpose of commercial advantage
  - collections of the library or archives are open to the public and anyone engaged in research
  - reproduction or distribution includes a notice of copyright
  - rights of reproduction and distribution include up to three copies of an unpublished work duplicated solely for the purpose of preservation and security, or for deposit for research use in another library or archives [interlibrary loan], when: the copy or phonorecord is currently in the collection of the library or archive, and a copy or phonorecord reproduced in digital format is not otherwise distributed in that format and not made available to the public outside the premises of the library or archives
  - rights of reproduction and distribution include up to three copies of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, stolen, or if the existing format in which the work is stored has become obsolete (the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or reasonably available commercially), when: the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price, and a copy or phonorecord reproduced in digital format is not otherwise distributed in that format and not made available to the public outside the premises of the library or archives in lawful possession of such a copy
  - rights of reproduction and distribution apply to a copy made from the collection of the library or archive where the user or another library makes the request of no more than one article or other contribution to a copyrighted collection or periodical issue, when: the copy or phonorecord becomes the property of the user, for the sole purpose of private study, research or scholarship, a warning of copyright is prominently displayed in the library or archives and on the order form, and when reproduction and distribution is not systematic or repetitive [does not substitute for a subscription to or purchase of such work]
  - rights of reproduction and distribution do not apply to musical, pictorial, graphic or sculptural works, motion pictures or other audiovisual work; exceptions include reproduction and distribution for the purpose of preservation, replacement, security and research use in another library
- **Section 109** permits the distribution of a legally owned copy [first sale doctrine], including sale, rental, lease, loan and other disposition of the copy; however this may not apply to digital works: software licensing agreements frequently prohibit the transfer of software to other computers and other people; when transferring a digital file, you are not sending the original, but a copy of the original; the DMCA prevents users from making digital copies of works by prohibiting the circumvention of access control mechanisms

## **Fair Use**

The fair use doctrine of the Copyright Act permits reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship and research. Each proposed use must consider the following four factors to determine fairness:

- The purpose and character of the use must clearly be for noncommercial, educational purposes to be viewed as fair
- The nature of the work itself, i.e., is it creative or informational, and what is the medium of expression print, musical or broadcast
- The amount, substantiality or portion used in relation to the work as a whole, i.e., what percentage of the whole work is to be used, and of what significance is that part to the work
- The effect of the use on the potential market for or value of the work. Even if the purpose, nature and amount of the work to be used falls within fair use, if that use could be perceived to result in reduced sales and profit to the copyright owner, the use would most likely not be viewed as fair

Multiple copies made for classroom use must each include a notice that the material is copyrighted. Copying to create, replace or substitute for anthologies, compilations or collective works is not a fair use. Copying of or from works intended to be "consumable" in the course of teaching (workbooks, standardized tests, etc.) is also not a fair use.

## **Electronic Reserves**

Golden Library's Electronic Reserves System guidelines will adhere to the fair use test factors discussed above. Assuming that a request meets the four-factor fair use test, that request is also subject to the following limitations:

- Only one article from a single journal issue, one very brief excerpt from a single book, one chart/graph/illustration from a source or one poem from a work may be placed on electronic reserve per semester. Any item(s) selected must constitute only a small portion of the total work (less than 10%)
- The same material may not be placed on reserve by the same instructor for the same course taught in consecutive semesters. Material may not become a standard assigned reading for an individual course taught in multiple sections by many instructors
- The total amount of material placed on reserve must constitute only a small percentage of the total amount of assigned reading for the course (less than 10%)
- The library will make only one (scanned) copy to be placed on reserve. Copies will be stored exclusively as Adobe PDF files. Access will be password-protected and restricted to students enrolled in the class for which the reserve reading is assigned. Files may be viewed or printed to a printer, one copy per person; saving to a disk is not permitted
- Reserve files will be removed at the end of each semester
- All requests must be accompanied by a completed ERS Request Form. Notice of copyright will appear on the scanned material, as well as a proper citation or credit to the source. Advance permission and/or payment of royalty fees may be required

The circumvention of any effective technological prevention measure, password or form of encryption used by a copyright holder to restrict access to material is prohibited.

## **Multimedia**

Students and faculty may incorporate the works of others into a multimedia work when producing their own educational multimedia projects for a specific course or as teaching tools in support of curriculum-based instruction activities. The multimedia work may be displayed and performed in conjunction with or creation of a class assignment, curriculum material, examination, student portfolio and professional symposium, subject to the time, portion, copying and distribution limitations listed below. Multimedia projects may also be created and displayed in real-time remote courses, provided there are no technological limitations on access to the multimedia project and that technology prevents copying of the copyright-protected material. All other uses require permission from all owners of the various media included in a multimedia project.

- Educators may use their educational multimedia projects created for educational purposes for a period of two years after the first instructional use within a class. Use beyond the two-year period requires permission for each copyrighted portion. Students may perform and display their own educational multimedia projects for use in the course for which they were created and may include them in a portfolio
- No more than 10% or three minutes of a motion media work may be reproduced or otherwise incorporated into a multimedia project
- No more than 10% or 1,000 words of text material may be reproduced or otherwise incorporated into a multimedia project
- No more than 10% or 30 seconds of music and/or lyrics from an individual musical work or whether embodied in an audiovisual work, e.g., a music video, may be reproduced or otherwise incorporated into a multimedia project
- Up to five photographs or illustrations by one author, and no more than 15 images or 10%, whichever is less, of the photographs or illustrations from a single work may be reproduced or otherwise incorporated into a multimedia project
- No more than 10% or 2,500 fields or cell entries from a copyrighted database or data table may be reproduced or otherwise incorporated into a multimedia project
- No more than two copies may be made, including the original, unless the project involves joint authors, all of whom may retain one copy. One copy may be retained by the creator(s), the other must be held in the school library or media center
- All multimedia projects must credit the sources used, display copyright notice and provide copyright ownership information. The opening screen and any accompanying print material must display a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to multimedia fair use guidelines and are restricted from further use
- Online instructional projects may be used only over a secure network for a period of 15 days after the initial use; after that period, one of the two permissible copies may be placed in the media center for on-site only use by students enrolled in the course

## **Music**

- Entire works of sheet music may be copied for performance purposes in emergencies, as long as replacement copies are subsequently purchased. Performable units (movements, sections, arias, etc.) may be copied if out of print or available only in a larger work
- For classroom (nonperformance) use, excerpts may be copied as long as they comprise no more than 10% of a whole work and the excerpt does not constitute a performable unit. No more than one copy per student can be made
- Student performances may be recorded for evaluative purposes or for a student portfolios
- Purchased copies of sheet music may be edited or simplified provided that the fundamental character of the work is not distorted or lyrics altered
- One copy of a sound recording of copyrighted music may be made from sound recordings owned by an educational institution or an individual instructor for the purpose of constructing aural exercises or exams and may be retained by the institution or instructor
- Copying to create, replace, substitute for anthologies or collected works, nonemergency copying for the purpose of performance, copying as a substitute for purchase, and copying without inclusion of the copyright notice are prohibited

## **Taping of Television and Radio Broadcasts for Educational Use**

Taping is permitted, if:

- The use is instructional and not entertainment
- The program is recorded simultaneously with the broadcast
- The program is broadcast without charge
- The program is recorded in its entirety and not altered
- The tape is retained by the educational institution for no longer than 45 days after the date of the recording
- The tape is used only once per class during the first 10 consecutive school days of the 45-day retention period; after the 10th day, the tape may be used only for instructor evaluation purposes

## **Software**

Golden Library prohibits the improper copying, distribution or use of contractually protected or copyrighted computer software from library computers, or in conjunction with circulating library material. Licensed software is purchased according to the number of computers on which it can be used and/or the number of users permitted to access it. Permission of the copyright owner must be obtained in order to use restricted software on computers or sites to which it is not licensed.

## Distance Learning (Section 110)

Limited educational use of copyrighted material has always been permissible in face-to-face teaching. Educators were also allowed to "perform" certain, very limited types of works via distance learning, if the transmission was received only in classrooms or similarly designated instructional locations. The TEACH Act now permits the following exemptions for distance learning, notwithstanding the provisions of section 106:

- the performance of a non-dramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, not including such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention, if:
  - the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution
  - the performance or display is directly related and of material assistance to the teaching content of the transmission
  - the transmission is made solely for, and, to the extent technologically feasible, the reception of which is limited to students officially enrolled in the course for which the transmission is made; or officers or employees of governmental bodies as a part of their official duties or employment; and the transmitting body or institution institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection
  - in addition, digital transmissions must apply technological measures that reasonably prevent retention of the work in accessible form by recipients of the transmission for longer than the class session, and unauthorized further dissemination of the work in accessible form by such recipients to others; and does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination
  - no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material, and no such material stored on the system or network controlled or operated by the transmitting body or institution shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients, or for a longer period than is reasonably necessary to facilitate the transmissions for which it was made

- the law anticipates that students will access material within a prescribed time period (class session) and will not necessarily be able to store the materials or review them later in the academic term; it is not intended to permit scanning and uploading of full or lengthy works, stored on a website, for students to access throughout the semester—even for private study in connection with a formal course
- Works explicitly allowed:
  - ❖ Performances of non-dramatic literary works
  - ❖ Performances of non-dramatic musical works
  - ❖ Performances of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; and
  - ❖ Displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session"
- Works explicitly excluded:
  - ❖ Works that are marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, e.g., specific materials available through an online database, or [commercially] marketed in a format that may be delivered for educational purposes through digital systems should not be digitized and uploaded by educators, but, rather, used by users themselves;
  - ❖ Performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act, if the educational institution "knew or had reason to believe" that they were not lawfully made and acquired
- The TEACH Act includes a prohibition against the conversion of materials from analog into digital formats, except under the following circumstances:
  - ❖ The amount that may be converted is limited to the scope of materials and "portion" limitations permitted; and
  - ❖ A digital version of the work is not available to the institution, or a digital version is available, but it is secured behind technological protection measures that prevent its availability for performing or displaying in the distance education program
- Faculty members using the Reserve A Film service may provide students access to streamed films in distance education classes, when digital viewing rights are purchased by the library

## **Internet**

Copyright protection may apply to text, photographs, graphics, cartoons, music, movie clips, etc., found on the Internet, as well as email. One should assume that all material found on the Internet is copyrighted. Placement of a work on a site with the copyright owner's permission does not mean that the copyright owner has given viewers of the site permission to use the work. Any use of copyrighted material found on the Internet is subject to the same fair use limitations discussed above. When in doubt, obtain permission. Always provide a proper citation or credit to the source.

The DMCA exempts any online service provider or carrier of digital information (including libraries) from copyright liability because of the content of a transmission made by a user of the provider's system, e.g., the user of a library computer. And, it enables providers to avoid copyright infringement liability due to the storage of infringing information on their own computers, or the use of "information location tools" and hyperlinks, if the provider acts "expeditiously to remove or disable access to" infringing material identified in a formal notice by the copyright holder (DMCA).

## **Interlibrary Loan**

Section 108 of the U.S. Copyright Act permits fair use copying of one article or other combination from a copyrighted collection or periodical issue, or a small part of any other copyrighted work as long as the copy in question becomes the property of the requester, its use is limited to private study, scholarship or research, and the copyright warning is prominently displayed.

Five articles is the maximum number of photocopies that can be requested from the most recent five years of a periodical to which the library does not subscribe. Requests in excess of the five-in-five rule require payment of a royalty fee. Golden Library contracts with various document delivery vendors and the Copyright Clearance Center to handle permissions and the collection of royalty fees, whenever necessary.

If a library user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. Golden Library reserves the right to refuse to accept a copying request if, in its judgment, fulfillment of the request would involve violation of copyright law.

## **Liability**

Nothing in Section 108 shall be construed to impose liability for copyright infringement upon a library or archives, or its employees, for the unsupervised use of reproducing equipment located on its premises, providing such equipment displays a notice in dictating that the making or distribution of a copy may be subject to the copyright law.

Any patron who willfully disregards the copyright policy does so at his/her own risk and assumes all liability.

*The information constituting this copyright policy was compiled by Michele Wood, Golden Library. Questions concerning the use of copyrighted material owned, borrowed, loaned, reproduced or distributed by the library for the benefit of library patrons should be addressed to James Pawlak.*

*For copyright questions not related to the uses described above, please consult ENMU's Office of General Counsel or an attorney.*

The following sources were consulted in preparing and updating this policy:

[ALA's DMCA and Teach Act Web Page](#)

[Applying Fair Use to New Technologies](#), Education World, 2003

[Conference on Fair Use Final Report \(CONFU Guidelines\)](#)

[Digital Millennium Copyright Act](#), 1998

[Educational Multimedia Copyright](#), PBS Teacher Source, 2003

[Fair Use Guidelines for Educational Multimedia](#), ADEC, 2002

[! Is Fair Use a License to Steal?](#), Education World, 2003

[Sonny Bono Copyright Term Extension Act](#)

[TEACH Act](#), 2002

[Title 17, U.S. Code](#), Copyright Law of the USA, 1978