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Guidelines on Use of Educational Media

UNIVERSITY OF DELAWARE POLICY FOR COPYRIGHT AND FAIR USE IN INSTRUCTION

I. Purpose and General Statement

University of Delaware faculty, staff and students are faced every day with decisions related to how to use materials in every format in accordance with U.S. Copyright law. Copyright and fair use are complex and changing. There are often no specific answers nor is there case law in response to specific questions.

The purpose of this document, *Policy for Copyright and Fair Use in Instruction*, is to provide, in one document, basic information about copyright, the expectations and policy of the University of Delaware, and guidelines to assist faculty, staff and students in making sound decisions when handling copyrighted materials in an instructional setting.

II. Policy on Appropriate Use of Copyrighted Works

The University of Delaware is committed to complying with all applicable laws regarding copyrights. As an institution devoted to the creation, discovery and dissemination of knowledge, the University of Delaware supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 U.S.C. subsection 107, by faculty, librarians, staff and students in teaching, research and service activities. (See Appendix B for Subsection 107)

Except as allowed by law, it is a violation of this Policy and law for University of Delaware faculty, staff or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound recordings) or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

III. Fair Use and Guidelines

A. General

1. Permissible Use

Under United States Copyright law, the "fair use doctrine" allows certain specified uses of a copyrighted work without requiring prior permission of the copyright holder under certain situations. The University of Delaware supports the

responsible, good faith exercise of full fair use rights, as codified in 17 U.S.C. subsection 107, by faculty, librarians and staff in furtherance of their teaching, research and service activities. (See Appendix B for subsection 107)

2. Elements of Fair Use: Good Faith Consideration Required

University of Delaware faculty or staff who propose to make fair use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a fair use analysis. These four factors are:

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit education purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Another way to state these four statutory factors is by asking the following questions:

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 be used?
4. What effect would this use have on the market for the original or for permissions if the use were widespread?

B. Classroom Copies

Classroom guidelines below which were negotiated in 1976 when the Copyright Law was revised can provide helpful guidance:

1. Classroom Copies – 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.

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

2. Classroom Copies – 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:*

- a. The copying meets the following tests of **brevity** and **spontaneity** as defined below; *and*
- b. Meets the **cumulative effect test** as defined below; *and*
- c. Each copy includes a notice of copyright
- d. There may be no charge to students beyond the cost of photocopying.

3. Classroom Copies – Brevity

Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.

Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[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. Paragraph "ii" above 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% of the words found in the text thereof, may be reproduced.

4. Classroom Copies – Spontaneity

- a. The copying is at the instance and inspiration of the individual teacher, and
- b. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

5. Classroom Copies – Cumulative Effect

- a. The copying of the material is for only one course.
- b. Not 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.

6. Classroom Copies – Prohibitions

The following shall be prohibited:

- a. 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.
- b. 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 tests and test booklets and answer sheets and like consumable material.
- c. Copying shall not:
 - i. substitute for the purchase of books, publisher's reprints or periodicals;
 - ii. be directed by higher authority; or
 - iii. be repeated with respect to the same item by the same teacher from term to term.
- d. No charge may be made to the student beyond the actual cost of the copying.

C. Coursepacks

University of Delaware faculty and instructors may wish to make coursepacks available to students consisting of book chapters, journal articles, illustrations, etc., to supplement or even supplant traditional textbooks. Coursepacks may include notes and reading materials for class use compiled by faculty and instructors. For coursepacks, permission is needed to duplicate copyrighted materials within coursepacks. Coursepacks are *not* covered under the Fair Use guidelines for multiple copies for classroom use as described in Section III. A.

On campus, the University of Delaware Graphic Communications Center and the University of Delaware Bookstore work collaboratively to provide services to faculty and instructors related to coursepack creation, copyright permissions, identification of costs,

printing of coursepacks, and selling coursepacks. UD Graphic Communications obtains the appropriate copyright clearances, identifies related copyright costs and prints the coursepack. UD Graphic Communications then provides the coursepack in print form for sale in the University of Delaware Bookstore. Contact UD Graphic Communications for more information about policies and procedures.

University of Delaware – Graphics Communications Center (GCC)

<http://www.udel.edu/printing/>

The University of Delaware asks that faculty and staff use the Graphics Communications Center (GCC) to prepare course packs and the University Bookstore to sell coursepacks so that University of Delaware students may use financial aid support to purchase needed materials. This is possible only when materials are purchased in the University Bookstore.

Regardless of how the course pack is created, all University of Delaware faculty, staff and students must respect copyright. If using an alternate copy service, using an on-line course pack service, or placing course reading materials on a web page, University of Delaware faculty, staff and students are responsible for making sure the copying complies with the copyright law.

The University of Delaware Library provides traditional print Reserve Room service and Electronic Reserves service. These services do not replace coursepacks, but provides faculty and instructors a way to place supplementary course materials on reserve. Electronic Reserves provides materials accessible on the Web, but restricted only to students in that course. The Library follows copyright guidelines for Reserve and Electronic Reserve. For more information about University of Delaware Library Reserve policies go to:

University of Delaware Library Guidelines for Faculty Using the Reserve Room

<http://www.lib.udel.edu/ud/reserve/faculty.html>

University of Delaware Electronic Reserves: Information for Faculty and Instructors

<http://www.lib.udel.edu/ud/reserve/semester.html>

IV. Classroom Performances and Displays

A. Classroom Performances

Section 110(1) of the Copyright Act is a broad exemption that permits faculty members to perform and display entire copyrighted works in a face-to-face classroom without seeking permission from the copyright owner. For example, in the course of instruction,

students and teachers may sing a copyrighted work, perform it musically or view a motion picture. There are certain conditions that must be met:

1. Students and teachers must be simultaneously present in the same classroom or other place normally devoted to instruction; in other words, the work is not transmitted beyond the classroom;
2. No members of the public or students not enrolled in the course may view or hear the performance or display;
3. If the work performed is a motion picture or other audiovisual work, the copy must be a lawfully made copy.

B. Distance Learning Performances

The exemptions available for performances and displays in face-to-face teaching are different than those available for distance learning. Section 110(1) covers face-to-face and 110(2) deals with any transmission of a performance or display as a broadcast or an online portion of a course.

Section 110 of the copyright law authorizes educational performances and displays of entire works (like poems, plays, musical works and movies), but it significantly distinguishes between what can be performed in the classroom and what can be *transmitted*. This results in a "gap" in legal authority to perform certain works for distance learners. (See Appendix D for Section 110)

The most important guideline in any distance learning context to remember: small parts, limited times and limited access are the keys to fair use. Specifically:

1. Incorporate performances of others' works
 - a. Sparingly, e.g., a reasonable and limited portion of a motion picture.
 - b. Only if a faculty member or the institution possesses a legal copy of the work (i.e., by purchase, license, fair use, interlibrary loan, etc.).
2. Include on the copies
 - a. Any copyright notice on the original
 - b. Appropriate citations and attributions to the source
 - c. A Section 108(f)(1) notice. (See Appendix C for Section 108)
3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

4. Obtain permission for performance of more than a reasonable and limited portion of all works except for nondramatic literary or musical works which may be performed in their entirety without permission. These rights are described in Sections 110 (1) and (2), respectively, of the Copyright Act. More information about the recent expansion of Section 110(2) rights for digital distance education may be found in the TEACH Act.
5. Avoid actions that circumvent publisher or producer technological controls on a work (such as decryption).

(See Appendix D for Section 110 and Appendix E for the Information about the TEACH Act)

C. Displaying Images for Educational Purposes

1. If the image is readily available legally online or for sale or accessible in a digital format, then point to, purchase or license the image. Do not digitize it unless one is in the process of negotiating a license. If a contract is pending, digitize and use the image in accordance with these guidelines until the license is finalized and the licensed digital image is received.
2. If the image is NOT readily available legally online or for sale or access in a digital format:
 - a. Limit the number of slides displayed in an online class session to the number used in a typical face-to-face session.
 - b. Faculty and instructors also may use digitized images at peer conferences.
 - c. Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments etc., and may keep works containing images in their portfolios.
3. Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.

V. Special Format Issues

A. Multimedia: Guidelines for digitizing and using others' works in multimedia materials for educational purposes

CCUMC Guidelines on Use of Educational Media are provided here as helpful guidance to University of Delaware faculty and staff developing instructional materials, and are included here for faculty and staff assistance.

The Consortium of College and University Media Centers (CCUMC) Guidelines on Use of Educational Media were developed in the course of the Conference on Fair Use ("CONFU") which was initiated in September of 1994 and ended in May 1997. The guidelines are controversial and provoked widely disparate responses by many of the nation's principal educational, scholarly and library organizations. Moreover, they were not generally adopted by CONFU, but they have been adopted by some individual educational institutions, largely because they were more restrictive than many educational institutions believed they should be. Many higher education institutions felt that Fair Use allowed somewhat broader interpretation than the CCUMC Guidelines outline.

The CCUMC Guidelines in Appendix F are included to assist faculty and staff in determining levels of use of materials that are generally seen as "safe".

B. Guidelines for Music

Guidelines for educational uses of music were negotiated as part of Section 107 of the Copyright law in 1976: (See Appendix B for Section 107)

1. Limit copying as follows:

- a. sheet music, entire works: only for performances and only in emergencies
- b. sheet music, performable units (movements, sections, arias, etc.): only if out of print
- c. student performances: record only for teacher or institutional evaluation or student's portfolio
- d. single copies of a compilation of sound recording clips, for aural exercise.

2. Include on copy

- a. any copyright notice on the original
- b. appropriate citations and attributions to the source.

3. Replace emergency copies with purchased originals if available.

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VI. APPENDICES

Appendix A: U.S. Constitution Article 1, Section 8

Appendix B: Section 107 of the Copyright Law of the United States of America...Fair Use

Appendix C: Section 108 of the Copyright Law of the United States of
America...Reproduction by Libraries and Archives

Appendix D: Section 110 of the Copyright Law of the United States of America...Performance
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Appendix E: Information about the TEACH Act

Appendix F: CCUMC (Consortium of College and University Media Centers) Guidelines on
Use of Educational Media

Appendix A

U.S. Constitution Article 1, Section 8

The Congress should have the power...

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...

Appendix B

Section 107 of the Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code

§ 107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Appendix C

Section 108 of the Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

- (a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if —
- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
 - (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
 - (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.
- (b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if —
- (1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and
 - (2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

Appendix C: Section 108 of the Copyright Law (continued)

- (c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if —
- (1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and
 - (2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

- (d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if —
- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
 - (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- (e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if —
- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

Appendix C: Section 108 of the Copyright Law (continued)

- (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section —

- (1) 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: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;
- (2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;
- (3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or
- (4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee —

- (1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords 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; or
- (2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

Appendix C: Section 108 of the Copyright Law (continued)

- (h) (1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.
- (2) No reproduction, distribution, display, or performance is authorized under this subsection if —
- (A) the work is subject to normal commercial exploitation;
 - (B) a copy or phonorecord of the work can be obtained at a reasonable price; or
 - (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.
- (3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.
- (i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

Appendix D

Section 110 of the Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright. Section 110 subsections (1), (2), (4), and (10) are relevant to University activities and appear below:

- (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
- (2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic 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, if —
 - (A) 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;
 - (B) the performance or display is directly related and of material assistance to the teaching content of the transmission;
 - (C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to —
 - (i) students officially enrolled in the course for which the transmission is made; or
 - (ii) officers or employees of governmental bodies as a part of their official duties or employment; and

Appendix D: Section 110 of the Copyright Law (continued)

- (D) the transmitting body or institution —
 - (i) 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; and
 - (ii) in the case of digital transmissions —
 - (I) applies technological measures that reasonably prevent —
 - (aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and
 - (bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and
 - (II) 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;
- (4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if —
 - (A) there is no direct or indirect admission charge; or
 - (B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

Appendix D: Section 110 of the Copyright Law (continued)

- (i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and
 - (ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and
 - (iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;
- (10) notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.

In paragraph (2), the term “mediated instructional activities” with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, 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 or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

Appendix D: Section 110 of the Copyright Law (continued)

For purposes of paragraph (2), accreditation —

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

For purposes of paragraph (2), 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 as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

Appendix E

Information about the TEACH Act

The following information about the TEACH Act has been supplied by the American Library Association:

On November 2, 2002, the "Technology, Education and Copyright Harmonization Act" (TEACH Act), part of the Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush. This Act revised Section 110(2) and 112 of the U.S. Copyright Law governing the conditions under which accredited, nonprofit educational institutions in the U.S. may use copyrighted materials without permission from the copyright owner and without payment of royalties. The TEACH Act provides additional opportunities for using copyrighted materials for teaching and learning.

1. Specific technological requirements of the TEACH Act that are relevant to teaching using learning management systems. If instructors and/or institutions wish to take advantage of the opportunities provided by the TEACH Act for using copyrighted materials, they must reasonably:

- a. limit access to copyrighted works to students currently enrolled in the class;
- b. limit access only for the time needed to complete the class session or course;
- c. inform instructors, students, and staff of copyright laws and policies;
- d. prevent further copying or redistribution of copyrighted works; and
- e. not interfere with copy protection mechanisms

2. The language of the Act, and what it means:

"SEC. 13301. EDUCATIONAL USE COPYRIGHT EXEMPTION.

(b) Exemption of Certain Performances and Displays for Educational Uses.--Section 110 of title 17, United States Code, is amended-- ... [to allow] the performance of a nondramatic 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, if..."

What does it mean?

U.S. Copyright Law has been amended to provide additional opportunities for using copyrighted works as part of the "distance learning" component of courses at accredited institutions, if the performance or display meets the criteria below. Learning management systems can provide a means of distribution and display of these materials.

Appendix E: Information about the TEACH Act (continued)

"(A) 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"

What does it mean?

Use of copyrighted materials must be under the supervision of an instructor. Learning management systems provide a course context in which the role of the instructor and the instructor's control over the materials are clearly defined.

"(B) the performance or display is directly related and of material assistance to the teaching content of the transmission"

What does it mean?

The materials used must be relevant to the course. This relevancy is determined by the instructor, and can be controlled by the instructor within learning management systems.

"(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to-(i) students officially enrolled in the course for which the transmission is made; or (ii) officers or employees of governmental bodies as a part of their official duties or employment"

What does it mean?

Only students enrolled in the course should have access to the copyrighted materials. Learning management systems provide straightforward methods for enrolling specific students in specific courses. These enrollments can be confirmed by officials at the institution, such as the Registrar, if enrollments are established in learning management systems through a standardized snapshot or other integration method that directly feeds official information concerning enrollments (including adds and drops) into learning management systems.

Note that the instructor must ensure that copyrighted materials are available only to students enrolled in the course, not guests or observers. This is easily accomplished by putting copyrighted materials in one or more specific course content areas and making those areas unavailable to guests and observers.

Appendix E: Information about the TEACH Act (continued)

"(D) the transmitting body or institution-- (i) 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"

What does it mean?

The institution is responsible for educating its faculty, students, and staff regarding copyright. Learning management systems can be used in various ways as a means of distributing information and policies. Courses can be created using a template that includes copyright information and policies as standard parts of each course. Instructors can also inform students of the copyright status of specific pieces of content by including notice in the description of the content in learning management systems.

"(I) applies technological measures that reasonably prevent-- (aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session"

What does it mean?

The copyrighted materials should not be available to students after the class session or course is complete. The instructor can use the date availability option on individual content items in learning management systems so that the materials become unavailable to students after the class session in which they are being used. The instructor can also set the date availability for the entire course, such that the course and all of its content is no longer available to the students after the end of the course.

"(bb) unauthorized further dissemination of the work in accessible form by such recipients to others"

What does it mean?

The copyrighted materials should not be copied and redistributed to others. Copying and redistributing Web accessible content is a general characteristic of the Web which is not easily prevented by current technological methods. Therefore a "reasonable" solution for the instructor using a learning management system is to provide a warning in the description of the content that notifies students that copying and redistributing these materials is a breach of copyright law. Note that instructors are expected to use

Appendix E: Information about the TEACH Act (continued)

"reasonable" means to comply with the Act, not obscure, difficult, or expensive technological measures.

"(II) 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"

What does it mean?

If the copyrighted materials have their own copyright protections built in, the users of those materials should not attempt to interfere with those protections. A learning management system does not provide any mechanisms that would interfere with copyright protection measures.

Appendix F

CCUMC (Consortium of College and University Media Centers) Guidelines on Use of Educational Media

The Consortium of College and University Media Centers (CCUMC) Guidelines on Use of Educational Media were developed in the course of the Conference on Fair Use ("CONFU") which was initiated in September of 1994 and ended in May 1997. CONFU was formed in connection with the Clinton Administration's National Information Infrastructure Initiative (NIAA) to facilitate informal discussion of the parameters of fair use in the digital environment in educational, scholarly and library settings among copyright proprietors, producers and users. The Conference on Fair Use ("CONFU") included informal discussion of more than twenty relevant topics over a 32 month period by scores of corporate and organizational representatives. One of these topics was "Educational Media". The CONFU Fair Use Guidelines on Educational Media are controversial and provoked widely disparate responses by many of the nation's principal educational, scholarly and library organizations. Moreover, they were not generally adopted by CONFU, but they have been adopted by some individual educational institutions.

CCUMC Guidelines on Use of Educational Media are provided here as helpful guidance to University of Delaware faculty and staff developing instructional materials, and are included here for faculty and staff assistance.

CCUMC Guidelines on Use of Educational Media

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1. Introduction
2. Preparation of Educational Multimedia Projects Under These Guidelines
3. Permitted Educational Uses for Multimedia Projects Under These Guidelines
4. Limitations
5. Examples of When Permission is Required
6. Important Reminders

1. 1. INTRODUCTION

a) 1.1 Preamble

Fair use is a legal principle that defines the limitations on the exclusive rights** of copyright holders. The purpose of these guidelines is to provide guidance on the application of fair use principles by educators, scholars and students who develop multimedia projects using portions of copyrighted works under fair use rather than by seeking authorization for non-commercial educational uses. These guidelines apply only to fair use in the context of copyright and to no other rights.

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 considered in each instance, based on particular facts of a given case, to determine whether a use is a "fair use": (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the participants'**** consensus of conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may nor may not be fair use. The participants also agree that the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain--such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions--or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works and users should refer to the applicable license terms for guidance.

The participants who developed these guidelines met for an extended period of time and the result represents their collective understanding in this complex area. Because digital technology is in a dynamic phase, there may come a time when it is necessary to review the guidelines. Nothing in these guidelines shall be construed to apply to the fair use privilege in any context outside of educational and scholarly uses of educational multimedia projects.

This Preamble is an integral part of these guidelines and should be included whenever the guidelines are reprinted or adopted by organizations and educational institutions. Users

Appendix F: CCUMC Guidelines (continued)

are encouraged to reproduce and distribute these guidelines freely without permission; no copyright protection of these guidelines is claimed by any person or entity.

*These Guidelines shall not be read to supersede other preexisting education fair use guidelines that deal with the Copyright Act of 1976.

**See Section 106 of the Copyright Act.

***The Copyright Act of 1976, as amended, is codified at 17 U.S.C. Sec.101 et seq.

****The names of the various organizations participating in this dialog appear at the end of these guidelines and clearly indicate the variety of interest groups involved, both from the standpoint of the users of copyrighted material and also from the standpoint of the copyright owners.

b) 1.2 Background

These guidelines clarify the application of fair use of copyrighted works as teaching methods are adapted to new learning environments. Educators have traditionally brought copyrighted books, videos, slides, sound recordings and other media into the classroom, along with accompanying projection and playback equipment. Multimedia creators integrated these individual instructional resources with their own original works in a meaningful way, providing compact educational tools that allow great flexibility in teaching and learning. Material is stored so that it may be retrieved in a nonlinear fashion, depending on the needs or interests of learners. Educators can use multimedia projects to respond spontaneously to students' questions by referring quickly to relevant portions. In addition, students can use multimedia projects to pursue independent study according to their needs or at a pace appropriate to their capabilities. Educators and students want guidance about the application of fair use principles when creating their own multimedia projects to meet specific instructional objectives.

c) 1.3 Applicability of These Guidelines

(Certain basic terms used throughout these guidelines are identified in bold and defined in this section.)

These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprint educational institutions.

Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various

Appendix F: CCUMC Guidelines (continued)

copyrighted media formats including but not limited to, motion media, music, text material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation. **Educational institutions** are defined as nonprofit organizations whose primary focus is supporting research and instructional activities of educators and students for noncommercial purposes.

For the purposes of the guidelines, **educators** include faculty, teachers, instructors, and others who engage in scholarly, research and instructional activities for educational institutions. The copyrighted works used under these guidelines are **lawfully acquired** if obtained by the institution or individual through lawful means such as purchase, gift or license agreement but not pirated copies. Educational multimedia projects which incorporate portions of copyrighted works under these guidelines may be used only for **educational purposes** in systematic learning activities including use in connection with non-commercial curriculum-based learning and teaching activities by educators to students enrolled in courses at nonprofit educational institutions or otherwise permitted under Section 3. While these guidelines refer to the creation and use of educational multimedia projects, readers are advised that in some instances other fair use guidelines such as those for off-air taping may be relevant.

2. 2. PREPARATION OF EDUCATIONAL MULTIMEDIA PROJECTS USING PORTIONS OF COPYRIGHTED WORKS

These uses are subject to the Portion Limitations listed in Section 4. They should include proper attribution and citation as defined in Sections 6.2.

a) 2.1 By students:

Students may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course.

b) 2.2 By Educators for Curriculum-Based Instruction:

Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia programs for their own teaching tools in support of curriculum-based instructional activities at educational institutions.

3. 3. PERMITTED USES OF EDUCATIONAL MULTIMEDIA PROGRAMS CREATED UNDER THESE GUIDELINES

Uses of educational multimedia projects created under these guidelines are subject to the Time, Portion, Copying and Distribution Limitations listed in Section 4.

a) 3.1 Student Use:

Students may perform and display their own educational multimedia projects created under Section 2 of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews

b) 3.2 Educator Use for Curriculum-Based Instruction:

Educators may perform and display their own educational multimedia projects created under Section 2 for curriculum-based instruction to students in the following situations:

3.2.1 for face-to-face instruction,

3.2.2 assigned to students for directed self-study,

3.2.3 for remote instruction to students enrolled in curriculum-based courses and located at remote sites, provided over the educational institution's secure electronic network in real-time, or for after class review or directed self-study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or PIN) and provided further that the technology prevents the making of copies of copyrighted material.

If the educational institution's network or technology used to access the educational multimedia project created under Section 2 of these guidelines cannot prevent duplication of copyrighted material, students or educators may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course. Students shall be advised that they are not permitted to make their own copies of the multimedia project.

c) 3.3 Educator Use for Peer Conferences:

Educators may perform or display their own multimedia projects created under Section 2 of these guidelines in presentations to their peers, for example, at workshops and conferences.

d) 3.4 Educator Use for Professional Portfolio

Educators may retain educational multimedia projects created under Section 2 of these guidelines in their personal portfolios for later personal uses such as tenure review or job interviews.

4. 4. LIMITATIONS--TIME, PORTION, COPYING AND DISTRIBUTION

The preparation of educational multimedia projects incorporating copyrighted works under Section 2, and the use of such projects under Section 3, are subject to the limitations noted below.

a) 4.1 Time Limitations

Educators may use their educational multimedia projects created for educational purposes under Section 2 of these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Students may use their educational multimedia projects as noted in Section 3.1.

b) 4.2 Portion Limitations

Portion limitations mean the amount of a copyrighted work that can reasonably be used in educational multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. **In the aggregate** means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limits apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines. It is understood, however, that students in kindergarten through grade six may not be able to adhere rigidly to the portion limitations in this section in their independent development of educational multimedia projects. In any event, each such project retained under Sections 3.1 and 4.3 should comply with the portion limitations in this section.

4.2.1 Motion Media

Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines.

4.2.2 Text Material

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of a multimedia project created under Section 2 of these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

4.2.3 Music, Lyrics, and Music Video

Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project created under Section 2. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

4.2.4 Illustrations and Photographs

The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work.

Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2.

4.2.5 Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project created under Section 2 of these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

c) 4.3 Copying and Distribution Limitations

Only a limited number of copies, including the original, may be made of an educator's educational multimedia project. For all of the uses permitted by Section 3, there may be no more than two use copies only one of which may be placed on reserve as described in Section 3.2.3.

An additional copy may be made for preservation purposes but may only be used or copied to replace a use copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described in Sections 3.3 and 3.4 for educators and Section 3.1 for students.

5. 5. EXAMPLES OF WHEN PERMISSION IS REQUIRED

a) 5.1 Using Multimedia Projects for Non-Educational or Commercial Purposes

Educators and students must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

b) 5.2 Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines

Even for educational uses, educators and students must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects before replicating or distributing beyond the limitations listed in Section 4.3.

c) 5.3 Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines

Educators and students may not use their personally created educational multimedia projects over electronic networks, except for uses as described in Section 3.2.3, without obtaining permissions for all copyrighted works incorporated in the program.

6. 6. IMPORTANT REMINDERS

a) 6.1 Caution in Downloading Material from the Internet

Educators and students are advised to exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on the network. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

b) 6.2 Attribution and Acknowledgement

Educators and students are reminded to credit the sources and display the copyright notice © and copyright ownership information if this is shown in the original source, for all works incorporated as part of the educational multimedia projects prepared by educators and students, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder).

The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses described in Section 3.2.3. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered "incorporated" if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

c) 6.3 Notice of Use Restrictions

Educators and students are advised that they must include on the opening screen of their multimedia program and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the multimedia fair use guidelines and are restricted from further use.

d) 6.4 Future Uses Beyond Fair Use

Educators and students are advised to note that if there is a possibility that their own educational multimedia project incorporating copyrighted works under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

e) 6.5 Integrity of Copyrighted Works: Alterations

Educators and students may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Educators and students are advised to note that alterations have been made.

f) 6.6 Reproduction or Decompilation of Copyrighted Computer Programs

Educators and students should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of these guidelines.

g) 6.7 Licenses and Contracts

Educators and students should determine whether specific copyrighted works, or other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.