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General Information

What is Intellectual Property?

Intellectual Property (IP) may include general ideas, designs, technology, trade secrets or even general know-how. You can sell your intellectual property or you can give it away.

Where does Copyright fit into Intellectual Property?

There are two kinds of intellectual property: technical and creative. Within these two kinds of IP are four basic tools that protect intellectual property:

- **Patents** (Very expensive; complete monopoly for a limited time, no use of any kind allowed without approval by owner.
NOTE: software may be patented)
- **Copyright** (the most inexpensive and long-lasting protection.
NOTE: Software may be protected as “literature” under copyright)
- **Trademarks** (protect corporate logos, school emblems, and some popular phrases)
- **Trade Secrets** (protect formulas and security software)

NOTE: The cost structures and requirements for each type of IP tool differ.

Copyright: What Is It?

Laws that specifically protect authors’ rights originated in the U.S. Constitution. The Constitutional designers wanted to encourage creativity for the country by promoting “the progress of science and the useful arts,” granting benefits to the author or owner of the work for limited times;” See U.S Constitution Article 1 Section 8 at:
<http://www.archives.gov/national_archives_experience/charters/constitution.html>

Who has copyright protection?

United States Copyright law (Title 17) grants owners of “original intellectual property” expressed in a “fixed medium” certain exclusive rights to that property:

- The right to copy.
NOTE: maintaining this right has become problematic in the digital age because pirating works has become easy. New laws to protect owners affect not-for-profit and public domain uses.
- The right to prepare derivative works; for example, a book based on a movie.
- The right to distribute copies (or not to distribute them).
- The right to perform a work publicly.
- The right to display a work publicly.
NOTE: The law has different provisions for face-to-face use and online classroom use, to protect owner’s rights to images and paintings.

- **NOTE WELL:** All materials on the web are copyright protected, contrary to popular myth. All tangible works, even a blurred photograph thrown into the waste basket, or anything displayed on a database or on the web, is automatically copyright protected. It is no longer necessary to register for copyright protection or even to display a copyright symbol, ©, to be protected. Therefore, most clipping and pasting of material on the web requires permission from the owner.

What is protected by Copyright?

Copyright law protects expressions in a “tangible fixed medium.” In order to be copyright protected, material must be written, drawn, painted, or shaped to other tangible expression. Here are some of the things that are protected by copyright:

- Works of literature, including computer programs
- Musical works and words for the music
- Dramatic works and their background music
- Pantomimes and choreography
- Graphic and sculptural works, including maps
- Motion pictures and other audiovisual products
- Sound recordings
- Architectural work

What is not protected by copyright? Can these things be protected in other ways?

- **Ideas** are not copyrightable, nor are methods, systems or facts, although some of these may have protection through other intellectual property tools: trademarks, patents, or trade secrets.
- **Slogans**, such as “9/11,” and familiar symbols, such as the American flag or the star pattern of the Big Dipper, cannot be copyrighted unless there is some creative reinterpretation. Symbols, such as Victor E. Tiger, the Fort Hays State University mascot, or trade names such as the database name “Lexis-Nexis,” can be protected as registered trademarks. For example, see the FHSU policy statement describing limits on Fort Hays State University logos in “Promoting Fort Hays State University: Keeping the Main Points in Focus.” Office of University Relations. 2002. <<http://www.fhsu.edu/univrel/is/points.shtml>>
- The **phone book** can be copyrighted only if it is more than a mere collection of numbers.
- **Common property**, such as height and weight charts, or the days of the year, cannot be copyrighted, but a calendar, which has a definite design, can be copyrighted. Lists of common ingredients in a recipe cannot be copyrighted: nobody needs permission to write “2 C flour” in a recipe.
- **Freeware** is copyrightable, but it is voluntarily made available on the Internet for public use, provided that the author gets recognition. It is not the same thing as “shareware,” which is often illegally shared intellectual property.

- Another large category of material not protected by copyright is government resources, which is considered to be **public domain**. But even government documents may have some copyright protection. Presidential libraries, for instance, may own the materials that they hold, even if they are otherwise government documents, and some government publications may use copyright-protected material for which they had to get permission; therefore, the next user must also get permission to use that aspect of a document. A web design is usually copyright-protected, even if it is on a government site featuring material in the public domain that may be used without permission.

Best Practice When Using Copyright Protected Materials

Why should Copyright Law matter to me?

- Nobody is “below the radar” in the digital age. The Digital Millennium Copyright Act of 1998 prohibits circumvention of copyright protection devices on the web and prohibits piracy of all web resources. It stipulates stiff penalties even for individual offenses.
- We should set an example of best IP practice for our students if we want them to avoid plagiarism: know the law, respect author’s rights, and protect our own rights and privileges.
- In this digital age, where our research and coursework are often available for everyone to see on the web, “acting in good faith” to use materials fairly and to get permission when needed is essential, even if it has not seemed necessary in the past.
- What you do in your classroom may affect the entire university community when it comes to copyright infringement. For instance, at another school a company detected a student who copied infringing material. He was sued, as was his supervisor, the chair of the department, the head of the college, the provost, the president, and the board of regents.

NOTE: Copyright law affects many teaching and student activities in colleges and universities. Handing out articles in a class may be an infringement of a journal’s rights to distribute the article. Instead, consider putting articles on either electronic or on regular reserve. For details on reserve guidelines, please contact Forsyth Library’s Circulation/Reserve Department: FL115, phone (785) 628-4434, <http://www.fhsu.edu/forsyth_lib/reserve.shtml> for a brochure or help.

You mentioned “acting in good faith.” What is this?

The Digital Theft Deterrence and Copyright Damages Improvement Act of 1999, Public Law No. 106-160, 113 Stat 1774, provides that “statutory damages” can reach as much as \$30,000 per work (or \$100,000 to \$150,000 for “willful infringement”). But if you have evidence of having informed yourself about copyright law and if you have a reasonable belief that your activity is not infringing, you have the option of a “good faith” defense.

In that case the damages, but not the judgment and its other remedies, will most likely be remitted.

How long does copyright protection last?

It depends. In 1998 Congress added the Sonny Bono Term Extension Act. Sonny Bono Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (1998); 63 Fed. Reg. 71,785 (Dec. 30, 1998; see < <http://www.copyright.gov/title17/92chap3.html>>). This means that currently copyrighted work lasts for the life of the author plus seventy years. Works of corporate authorship get covered for a maximum of 95 years, or 120 years from their creation, whichever comes first. After that, they enter the public domain. A general rule is that if you encounter a work that was published 95 years ago, it is probably in the public domain and can therefore be used without permission.

Libraries, archives and nonprofit educational institutions may treat a copyrighted work within the final 20 years of protection, added by the Sonny Bono Term Extension, as if it were in the public domain under certain circumstances:

1. The purpose must be preservation, scholarship, or research.
2. A good faith investigation ensures that the work is not being sold commercially, and therefore no market value is being compromised.
3. The work or phonorecord cannot be obtained at a reasonable price.
4. Use of the work stops if the copyright owner appears and provides notice.

There are also rules on manuscripts and other unpublished materials that are important to historical researchers. Statutory protection now governs works at life plus 70 years, but the common-law works began to enter the public domain only after December 31, 2002. In 2003, unpublished works of authors who died seventy years before that date will enter the public domain, and each subsequent year, more authors' works will be available. Until the time that unpublished works enter public domain, the laws of copyright and fair use apply to all manuscripts, letters and diaries.

What is fair use?

Copyright Law has exceptions to its rules, and "fair use" is the best known and most general. The "fair use" guidelines cover a large number of possible situations that legislators cannot readily predict. What this means is that in many cases, there are no simple answers to questions about using a copyrighted item, especially with the new additions to U.S. Copyright law that now govern digitized media: see <http://www.fhsu.edu/forsyth_lib/copyright/DMCATEACH.shtml>

You can and should, however, be able to make an informed decision about fair use.

Fair use Questions

Here are a few questions that will help you decide whether your use is or is not infringing on the owner's rights:

- Do you want to quote from an article?
- Copy and paste something into your web site?
- Copy an entire book that is out of print?

The law provides some general fair use guidelines:

The Four Factors of Fair Use:

1. What is the **purpose** of the use?

Nonprofit or educational uses are more likely to be interpreted as fair use than is work. If you are using a university system for a profit-making activity, it may affect not only your claim to fair use, but the university's status as a non-profit organization.

"Transformative" use is also protected. When the material is transformed into something new or can be used in a new way, such as using a quote from an author, or parts of an earlier work in your not-for-profit multimedia project which you created for your class, the courts support you. Thumbnail images for locating pictures on the web have been accepted as a "transformative".

CAUTION: Multiple copies of an item made for classroom purposes may be fair use, but only if the other three factors are taken into account. Although there is no specific law guiding classroom amounts, there are guidelines created by organizations that suggest what fair use is. A "safe harbor" of practice in using multiple copies would be:

- Only one copy per student, free, except to recover cost.
- Article: not more than 2,500 words, longer work of prose, 1,000 words, or 10% of the work, whichever is less; a poem: 250 words.
- No more than one chart, diagram, cartoon or picture.
- Copying at the initiative of the teacher, not by administrative fiat.
- It is unreasonable at the time to get permission from the owner.
- Copying done for only one course, then get permission. Instead of copying, buy the item if you plan to use it semester after semester.

CAUTION: Non-profit libraries serving corporate clients through interlibrary loan should be aware of a ruling against the idea that a for-profit institution could make the "fair use" argument on behalf of its researchers' copying articles from journals that the business library acquires, since the Copyright Clearance Center exists as a reasonable outlet of article distribution.

2. What is the **nature** of the copyrighted work?

There are many aspects of a work that could be considered the “nature” of the work:

- Genre: Unpublished letters in archives do not fall within fair use.
- Is it a work of fiction or of nonfiction? Courts are more likely to support you if the work that you are using is nonfiction. For example, you may need to copy a substantial portion of pages from a book on how to fix a car, since it would be hard to use the book without damaging it while you are working on the car.
- Nature is not necessarily limited to genre. Reselling a consumable workbook that has a CD in it designed to help you learn Spanish grammar changes is not fair use, and the university bookstores will not accept such a book for resale: its nature is that its function is not permanent.
- Nature also enters into considering out-of-print works: is it out of print? NOTE: “Out of print” does not necessarily mean that a work is not copyright protected and is in the public domain. Copyright lasts for the life of the author plus 70 years.

3. How much and how substantial a **portion** of the work are you using?

Citing three sentences from Adrian John’s 753 pages of *The Nature of the Book*, a volume of historical criticism, may be fair use, but three sentences from the poet H.D.’s four-sentence poem “The Pool” may not be fair use. As with the other factors, this factor of fair use is not exact. It requires your educated decision: what is a “substantial” portion of the work?

What constitutes “small portions”? Once again, there is no “bright-line” rule for portions. Ad hoc committees comprised of concerned businesses, educators and librarians offer some suggestions that, while not the law, may be regarded what constitutes fair use activity within a “safe harbor” for avoiding infringement charges:

According to these rules of thumb, professors and students can use:

- Ten percent or three minutes of motion media.
- Ten percent or 1000 words of text materials.
- Five images by an artist or photographer or 10 percent or 15 images from a collective work.
- Ten percent or 2500 fields or cell entries from a copyrighted database or data table.
- Ten percent or 30 seconds of music and lyrics from one work or from several extracts from one work.

Appendix A offers some guidelines that may be used as rules of thumb on portions.

4. Will your use have an adverse effect on the owner's ability to **market** the product?

The effect on the market is arguably the most difficult of the four factors to interpret. It is also often the factor that is most central to court decisions. The effect on the market often depends on your purpose, provided that the other factors of fair use also weigh in your favor. It is more difficult to prove harm to the market if your purpose is research, and even in the instance where infringement is proven, if there is no actual evidence of damage to the market, a monetary award to the plaintiff may be small or nonexistent. It is important, however, to realize that since the digital age, there are now more lawsuits against educators and non-profit organizations. And if you want your class to have copies of an out-of-print book, please check to be sure that the publisher will allow you to do it for a reasonable fee.

Are there any easy-to-follow guidelines for educational fair use of copyright protected material on the web? I'd also like to know what guidelines apply to on-campus copyright compliance.

The guidelines are not law, but they are a "safe harbor": it would be difficult to charge anyone with infringement who uses the following guidelines (See also Appendix A for a chart):

Printed Material (short pieces) may be used for multiple copies or for a students' multimedia project.

A poem less than 250 words:

- 250-word excerpt of a poem greater than 250 words
- Articles, stories or essays less than 2,500 words
- Excerpt from a longer work (10 per cent of the work or 1,000 words, whichever is less)
- One chart, picture or diagram, or cartoon per book or per periodical issue.

Restrictions:

- Copies may not be illegal
- One copy per student
- Teachers may make copies in nine instances per class per term
- Usage must be "at the instance and inspiration of a single teacher"—i.e., not school or district policy.
- Do not create anthologies
- Do not copy "consumables" such as workbooks.
- There are special restrictions in the distance learning setting; please read the section on the Digital Millennium Copyright Act of 1998 and the TEACH Act of 2002.

Music and Performance:

- It is acceptable to copy sound recordings or musical scores for preservation only (copies must be made from material that was previously purchased by the university).
- Musical compositions, in most instances, may not be copied for performance purposes.
 - Copying for performances depends on the extent of the copying and the reason for copying.
 - In an emergency situation when a performance is imminent, copying is allowed. The temporary copy must be disposed of following the performance and must be replaced by a purchased copy.
- When synchronizing film, graphics, and/or video with music, obtain or ask the Copyright and Intellectual Property office to obtain copyright permission to use the music.
 - Exception: In limited instances, synchronizing may be done without permission if it follows fair use guidelines. For instance, a documentary on public television could use portions of musical works without permission if the portions are less than 3 minutes or 10% of the work, whichever is less. Otherwise, it is necessary to get written permission. See the section on permission for details.
- The copyright owner has the exclusive right to create derivative works of copyrighted material. If you do not own the copyright, you are required by law to obtain permission from the copyright holder if you want to create a derivative work.
 - A “derivative work” is a work based upon one or more preexisting works.

Copyright laws also protect new arrangements of older works. The music itself is in the public domain, but the arrangement is the property of the owner of that arrangement.

Computers and Software:

Copyright Protection of Computer Software 17 U.S.C. Sect. 1201

The Digital Millennium Copyright Act of 1998 and the TEACH Act of 2002 are the most important laws governing copyright protection in a digital environment. Unlike Fair Use laws, which are general and are designed to leave the field open to interpretation, the DMCA and TEACH are stringent and specific. They are intended primarily to address circumvention of copyright protection devices on the web. For details, please see the discussions in this handbook and visit our site at http://www.fhsu.edu/forsyth_lib/copyright/

Caution: licensing agreements, including, in some cases, opening the wrapper on the item, take precedence over fair use.

CAUTION: To repeat: Fair use guidelines are not rigid prescriptions. There are no magic answers to the frequently asked question, “Is this OK?” There are no exact numbers of lines, phrases or paragraphs that you may use and be sure that your product is within the guidelines of fair use. You have to use your judgment to the best of your ability. Always consider the four factors and the uniqueness of the use to which you are putting the materials.

Are there special laws for digital works?

Yes. The most important are The Digital Millennium Act of 1998 and the TEACH Act of 2002. The Small Webcaster Settlement Act of 2002 also impacts distance education programs.

Recent Laws Affecting Digital Works:

What is the DMCA? U.S.C. Section 1201: THE DIGITAL MILLENNIUM COPYRIGHT ACT of 1998 (DMCA):

- It is now a crime to circumvent anti-piracy programs or to manufacture and sell devices specifically made for circumvention.
- Nonprofits may crack copyright protection devices for encryption research, assessing product interoperability, and to test security systems.
- There are limits on copyright infringement liability for Internet service providers (ISPs). Fort Hays State University is an example of an ISP.
- ISPs, however, are expected to remove material that appears to constitute copyright infringement, and for that reason, Fort Hays State University has appointed David Schmidt:<dschmidt@fhsu.edu> as the infringement agent to receive complaints about any infringements on an FHSU web site.
- The DMCA also specifies that there be licensing fees for webcasters, to be set by the Register of Copyrights.
- The DMCA extends the archives rights of libraries [Section 108 b and c], allowing them to convert copyrighted print and other non-digital media to electronic media for storage and retrieval purposes, but the digital copy must be unavailable offsite of the library premises unless it is in the public domain or the library has permission.
- Finally, DMCA also requires that the Register of Copyrights study the impact of the DMCA on “criticism, comment, news reporting, teaching, scholarship, or research” and submit periodic recommendations.

NOTE: Contrary to popular opinion, materials posted on the web are not public domain. They are not. Penalties for infringement of digital material are very heavy:

17 U.S.C. Sect.1203: See

<http://straylight.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00001203---000-.html>

17 U.S.C. Sect.1204: See

<http://www4.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00001204----000-.html>

(Civil and criminal penalties for violation of DMCA)

TEACH ACT (2002) (TECHNOLOGY, EDUCATION AND COPYRIGHT HARMONIZATION ACT): Amended U.S. Copyright Law section 110, [1]-[2]. This bill, now incorporated into U.S. Copyright Law, will benefit distance education by updating Title 17 (U.S. Copyright Law) to allow not only cable, but also digital transmission of:

- entire performances of non-dramatic musical or literary work
- "reasonable and limited portions" of other performances
- displays of works and images (stationary)

But please note: The TEACH Act has stringent standards of compliance, with federal guidelines on use of copyright-protected performances and other materials. It was signed into law on November of 2002.

SONNY BONO TERM EXTENSION ACT (1998)

The Sonny Bono Act extends the length (duration) of copyright an additional 20 years, to 70 years after the death of the author. This act was the first copyright provision to be constitutionally challenged in 200 years: the complaint was that the duration exceeded a reasonable time before a work would enter the public domain. The Supreme Court has decided in favor of maintaining the Extension Act.

Isn't TEACH just "Fair Use" for the web?"

Not at all: "Fair Use" is very general whereas TEACH has a long list of definite guidelines. If you are putting material on the web, even behind a password-protected site, please make sure that you know the answers to these questions, which cover all of the stipulations for appropriate use under the TEACH Act:

- Even if I am in a nonprofit setting, is my work intended as a non-profit, educational effort?
- What is the FHSU policy on the use of copyrighted materials? See <http://www.fhsu.edu/forsyth_lib/copyright/ethics.shtml>
- Where can I find accurate information on copyright available to faculty, students and staff?
- Can Technical Staff assure me that our systems do not interfere with security protections built into materials I want to use?
- Have I made sure that no one will have access to this material other than the students in the class for which it is intended?
- Will the materials be provided at my direction during the relevant lesson?
- Are the materials usefully and directly related to my teaching content?
- Is my class part of the regular offerings of my institution?

- Have I included a notice in the display of materials placed online that they are protected by copyright?
- Is Fort Hays using technology that reasonably limits the students' ability to retain or further distribute the materials?
- Have I ensured that the materials will not be available to the students for longer than the class session?
- Will my technological assistants store the materials on a secure server and transmit them only as permitted by law?
- Will my technological assistants avoid making any copies other than the one I need to make the transmission?
- Are the materials the amount and type that the law authorizes:
 - Entire performances of nondramatic literary and musical works
 - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
 - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- Did I make sure that the materials are not among those the law specifically excludes from its coverage:
 - Materials specifically marketed for classroom use for digital distance education
 - Copies I know or should know are illegal
 - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the student
- If I am using an analog original, did I check before digitizing it to be sure that I copied only the amount that I am authorized to transmit?
- Am I certain that there is no digital copy of the work available for me to use except for those with technological protections that prevent my using it for the class in the way that the statute authorizes?
- Finally: remember, there are also “fair use” and permissions as other options.

Are there any digital lawsuits being argued against non-profit organizations?

Yes, and we can expect the number of such lawsuits to increase. For updates on laws and litigation, visit the FHSU Copyright and Intellectual Property “Laws and Litigation” quick link at <http://www.fhsu.edu/forsyth_lib/copyright/new.shtml>

The TEACH Act of 2002:

The Technology, Education and Copyright Harmonization (TEACH) Act of 2002, Division C, Title III, Subtitle C of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758, 1910, amends Chapter 1, Title 17, United States Code (USC), to incorporate provisions relating to use of copyrighted works for distance education). It was signed into law on November 2, 2002.

Under carefully specified conditions, the TEACH Act allows the following transmissions:

- Performances of entire non-dramatic musical or literary works.
- “Reasonable and limited portions” of other types of performance.
- Displays of still images, including art and other creative works.
- In summary, the TEACH Act updates U.S. Copyright Law (Title 17) to allow strictly limited educational use, including distance education use, of audiovisual resources.

What is the Small Webcaster Settlement Act of 2002?

The **Small Webcaster Settlement Act of 2002**, Pub. L. No. 107-321, 116 Stat. 2780 (amending chapter 1, title 17, *United States Code*), was enacted December 4, 2002. It amends section 112 at < <http://www.copyright.gov/fedreg/2002/67fr45239.html>> and section 114 at< <http://www.copyright.gov/title17/92chap1.html#112>> of the Copyright Act, title 17 of the United States Code. Among other things, the SWSA authorizes SoundExchange to enter into agreements on behalf of copyright owners and performers with small webcasters (who operate under section 112 and section 114 of title 17, United States Code), regarding, among other terms and conditions, the payment of royalties. The royalty rates established in any such agreement are effective in lieu of royalty rates established by the Copyright Office. SoundExchange is the Receiving Agent designated by the Library of Congress in its July 8, 2002, regulation regarding the collection of royalty payments made by eligible nonsubscription transmission services under the section 112 and section 114. *See* 37 C.F.R. 261.4 (July 8, 2002): <<http://www.copyright.gov/fedreg/2002/67fr45239.html>>.

Getting Permission

When do I need permission to copy? Are there any services available at Fort Hays to help me?

In a digital setting, it is usually the case that permission is needed to use materials, although there are some exceptions.*

NOTE: It is important to realize that it is no longer necessary for materials to be registered or to bear a copyright emblem, ©, in order to be copyright protected. Currently, any work that is in a tangible form: written, recorded, videotaped, etc., is automatically copyright protected. Fort Hays State University's Copyright and Intellectual Property Web Site at <http://www.fhsu.edu/forsyth_lib/copyright> has quick links on how to get permission on the quick link navigation bar at <http://www.fhsu.edu/forsyth_lib/copyright/permission.shtml>. It includes a boilerplate sample form that you may use. See also the Faculty Resources page for more help: <http://www.fhsu.edu/forsyth_lib/copyright/faculty.shtml>

*It is acceptable to point to a link on the web without permission, provided that it is not deep-linked or behind a password-protected site and therefore intended as a commercial venture, but it is considered best practice to let the individual or company know of the link. Usually, they will be delighted to have further publicity and may point back to your site.

*Small amounts of material may still be used in classroom settings and on the web as fair use.

*Remember: government sites that are available to the public are public domain, and you do not need to ask permission to use these sites. Keep in mind, however, that some government documents, works and images are copyright protected.

What are Specific Copyright Laws Governing the Use of Electronic Media?

Copying Films

A general rule of thumb: nonprofit, informational and educational uses of copyrighted films presented to a defined audience is, in general, legal. A film or movie under copyright can be used if it is presented to a face-to-face class, if its purpose is for education, and if no admission fees are charged (tuition does not qualify as an admission fee).

If the university has met the requirements for the TEACH ACT, a teacher may put copyrighted material on the Internet for a class without permission as long as it is not open to a general, undefined audience. The material cannot be open to the general public and must be protected, i.e., by a password or PIN number.

The criteria for using copyrighted media are defined in Sec. 110 of the copyright law:

- Public showing is by instructors or pupils
- Class is part of a regular curriculum
- It is face-to-face teaching (not on a web or in a distance education setting, unless TEACH has been properly implemented in the school)
- The entire audience is participating in the educational activity
- The entire audience is in the same room, or at least in the same building. If cable is being used, like the Internet, it is considered distance education.
- Teaching activities are by a non-profit educational institute (not a for-profit educational business and not a for-profit initiative within a nonprofit institution).
- The performance is in an educational setting. Performances at home or in a place of entertainment are not considered educational.
- The tape has been lawfully made. A copy may be acceptable from a purchased tape, but the original copyright statement must be shown on the copy.
Departments should be sure to protect original copies of their tapes.

Audiovisual Materials

Audiovisual materials, including any audio, video, text, images, and graphics, are all protected under copyright law. Contrary to common belief, the law does not allow librarians to make backup copies to be lent in lieu of the original. The right to archive published works under subsection c, Section 108 of the U.S. Copyright Law only allows replacement of damaged, deteriorating, lost or stolen copies, or when the format of a recording has become obsolescent, and then only if you fail, after a reasonable effort, to find a replacement that is not obsolescent.

The abundance of material available for use combined with today's very advanced technology puts owners of audiovisual material at a high risk of having their copyright rights infringed upon, since people are able to combine many different forms of multimedia in a variety of types of presentations, and therefore the laws for high tech uses are stricter. You are allowed to use copyrighted material in multimedia projects only if the owner of the information is properly cited and if the works are lawfully acquired. The law also requires that the purpose of your work be nonprofit and educational, and that only small portions be used.

Media Center / TV Studio, Graphics guidelines:

TV Studio:

“Off air” showings, including “videotaped recordings of television programs from either broadcast or cable television stations,” are allowed if:

- Only shown in a classroom or other similar institution devoted to instruction.

- Shown within ten consecutive school days after the tape is made (after ten days, the tape can only be used to evaluate whether or not licensing is to be purchased for it, but after forty-five days it must be destroyed. Some stations are more liberal about this directive; please check the web site of the station for terms of use.)
- Not altered in any way unless you have permission; this includes not combining or merging the video to constitute teaching anthologies or compilations.

Copyright protected tapes may be duplicated only with written permission from the copyright holder.

Dubs may be reproduced and incorporated into a project if they consist of not more than 10% of the work or three minutes, whichever is less.

Note: Be sure not to record satellite television unless FHSU or you are authorized for free reception or unless Fort Hays State University has obtained a license to copy the program.

Graphics:

- From a photograph, illustration, from collections of photographs or from collections of illustrations, use single works in their entirety, but no more than five images by a single artist or photographer.
- From a collection, not more than 15 images or 10 percent (whichever is less).
- Older illustrations in the public domain may be used without permission, but sometimes they are part of a copyright-protected collection. Visit <http://www.loc.gov> or <http://www.mpa.org> to find information on copyright ownership.

Sound Recordings:

- Emergency copying is acceptable for replacing purchased copies when they are not available for an imminent performance, provided that you substitute purchased replacement copies afterwards.
- If copying for academic purposes other than performance, limit it to less than 10% of the whole work, and in no case should it be a performable unit such as a section, movement or aria. Not more than one copy per pupil.
- For educational purposes, you may edit print copies which have been purchased, provided that the work is not distorted or the lyrics altered, or added if none exist.
- It is OK to make a single copy of performances by students for evaluation or rehearsal purposes. The teacher or the institution may keep this copy.
- Making a single copy of sound recordings (tape, disc, cassette, etc.) for tests or aural exercises is allowed.
- Be sure to avoid creating anthologies or copying from “consumables”
- Do not copy to avoid purchase.
- Always include the copyright notice that appears on the original.

- FHSU policy is to take preventive measures against the infringing practice of P2P (peer-to-peer) sharing of copyright protected material, including music files. See <http://www.fhsu.edu/forsyth_lib/copyright/ethicsStudentMemo.shtml>

Photocopy reproduction guidelines for printed materials on campus:

- Teachers can make multiple copies, but not anthologies of consumables such as workbooks, for classroom use.
- Make one copy per student, from legally acquired copies.
- Students may incorporate text, sound files, and images into multimedia projects.
- Teachers may make copies nine times per term.
- Copies should be “at the instance and inspiration of a single teacher,” not as a directive from the administration.

Appendix A: Summary of “Safe Harbor” Guidelines

Caution: These guidelines have been created by the Conference on Fair Use (CONFU), an ad hoc committee of educators, business leaders, and librarians, sponsored from 1996-1998 by the U.S. Patent and Trademark Office. They are not the law but are rules of thumb. There may be instances in which fair use mandates using more or less. The format of this chart is largely based on: Hall, Davidson. “The Educator’s Guide to Copyright and Fair Use.” *Technology and Learning* 15 October, 2002.

<http://www.techlearning.com/db_area/archives/TL/2002/10/copyright.html>.

Material	Recommended Portions	Comments
Print	<ul style="list-style-type: none"> • “Text material: 10% or 1,000 words, whichever is less. • “Entire articles, stories, essays <2500 words. • “2 pages of an illustrated work <2500 words (children's book) • “Poems: entire poem > 250 words. Longer poems: 250 words but not > 3 excerpts from a single poet or 5 poets from an anthology. • “1 chart, image or diagram per publication. 	<ul style="list-style-type: none"> • “Multiple copies acceptable for classroom use, 1 per student. • “Use legally acquired originals only. • “Teachers can make copies 9 times per class each term. • “The teacher decides to copy; it should not be district, administrative or departmental policy. • “Do not create "course packs" or anthologies. Basic Books, Inc. v. Kinko's Graphics Corp., 758 F Supp. 1522 (S.D.N.Y. 1991) • "Consumables" (workbooks, etc.) should not be copied.
Archived Print Material	<ul style="list-style-type: none"> • "An entire work • "Portions of a work • "A work for which the existing format has become obsolete (Ex: punch cards, 8-track tapes) 	<ul style="list-style-type: none"> • “Archivist or librarian may make up to 3 copies to replace copies that are lost, damaged, deteriorating or stolen, in order to share one-of-a-kind and out-of print works with other libraries. • “Machine-readable digitized copies of protected work created by the library must not be available outside of the building. • “Copies for patrons must include original copyright information and be stamped with a copyright notice.
Archived Unpublished Manuscripts	<ul style="list-style-type: none"> • “As a rule of thumb, unpublished works created before 1/1/78 is in the public domain. See Lolly Gasaway, "When Works Enter the Public Domain" for details: <http://www.unc.edu/%7EuncIng/public-d.htm>. 	<ul style="list-style-type: none"> • “Manuscripts that have been published between 1/1/78 and 12/31/2002 are copyright protected.
Illustrations and Photographs	<ul style="list-style-type: none"> • “Single works can be used in their entirety, but not > 5 works by a single artist. • “From a collection, not >15 images or 10% of the collection, whichever is less. 	<ul style="list-style-type: none"> • “Older images may be in the public domain. For ownership information, visit the U.S. Copyright Office at <http://www.copyright.gov> • Thumbnail images have been ruled as fair use online (Kelly v. Arriba Soft Corp., 77 F Supp. 2d 1116 [C.D. Cal. 1999]). • “Identify any alterations made. • “Caution: images made available online may be infringing on copyright owners. Always take care to use a

		reputable site and check on ownership.
Video (for viewing only)	<ul style="list-style-type: none"> • " Teachers may use purchased or rented videos, DVDs or Laserdiscs in classrooms • "Copies may be made for archives or to replace lost, stolen, deteriorating or damaged copies only if... (see comment) <p>See Section 108 of the U.S. copyright Act of 1976: <http://straylight.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000108----000-.html></p>	<ul style="list-style-type: none"> • " Legitimately acquired • " Face-to-face (not distance, which also means not cable transmission) • " Instructional use, not for entertainment or reward • "Copying OK only if replacements not available at fair price or in a usable format.
Video (for multimedia projects)	<ul style="list-style-type: none"> • "Up to 10% or 3 minutes, whichever is less. • "Limit copies of an educator's multimedia project: not more than 2 use copies, only one on reserve. 1 additional archival copy, only used to create a replacement for lost, deteriorating or stolen copies. 	<ul style="list-style-type: none"> • "Use legal copies only; no bootleg or home recording. • "Make proper attribution to copyright owner. • "Include on opening screen of multimedia program and any accompanying print material a notice that the materials have been prepared under the fair use exemption and may contain copyright protected materials (see Appendix C for a notice)
Music, Lyrics, Music Video	<ul style="list-style-type: none"> • "Up to 10% as part of a multimedia program, maximum 30 seconds. • "For more guidelines, see the Music Library Association's Copyright Page: <http://www.musiclibraryassoc.org/Copyright/guidemus.htm> 	<ul style="list-style-type: none"> • "Educational purpose only. Alterations should not change the fundamental character of the work.
Computer Software (purchased)	<ul style="list-style-type: none"> • " Library may lend software to patrons • "Libraries may make copies to replace lost, stolen, damaged copies if unavailable at a fair price or in a usable format. • "Up to 10% or 2500 fields (whichever is less) of a copyrighted database or data table may be incorporated into an educational multimedia project. 	<ul style="list-style-type: none"> • "A copyright notice should be on the software. See Appendix C for a sample notice.
Computer software (licensed)	<ul style="list-style-type: none"> • "Any conditions of licensing will take precedence over fair use considerations. • " Software may be installed on multiple machines and distributed via a network 	<ul style="list-style-type: none"> • "The number of simultaneous users or machines may not exceed the number of licenses. • " Monitor to prevent copying (except for archival purposes)
Internet (public access)	<ul style="list-style-type: none"> • "Images, sound and video files may be downloaded for non-profit educational purposes. 	<ul style="list-style-type: none"> • "Get permission to repost images. Links can be posted without permission. It is good practice to notify those being posted. • "Web resources should be non-infringing.
Television	<ul style="list-style-type: none"> • "Broadcasts or tapes made from broadcasts may be used for instruction • "Cable channel programs may be used with permission. Length of time allowed varies. For general copyright information visit "Cable Resources for Television," <u>Cable in the Classroom</u>. Lengths of time are specified for each program:< http://www.ciconline.org/Resources/copyright.htm> 	<ul style="list-style-type: none"> • "Schools are allowed to retain broadcast tapes for a minimum of 10 school days. Some companies allow much more; check with the company.

Appendix B: Copyright Notice Prescribed by Law for Nonprofit Copying

The Copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship or research.” If a 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.

This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

When printing the notice on an order form, the regulations specify that it: “shall be printed within a box located prominently on the order form itself, either on the front side of the form or in a space immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.” The details specify no less than 18 points for a posted notice and no less than 8 points for a notice on a form.

Source:

U.S. Copyright Office (Code of Federal Regulations, Title 37, Section 201.14). Visit the CFR index at: <<http://www.copyright.gov/title37/201/index.html>> and click on #14.

For more information, visit the Copyright and Intellectual Property Center at <http://www.fhsu.edu/forsyth_lib/copyright/>

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