

REPRODUCTION OF COPYRIGHTED MATERIAL

POLICY TYPE: ADMINISTRATIVE

RESPONSIBLE OFFICIAL TITLE: ASSOCIATE PROVOST AND DEAN OF THE LIBRARY

RESPONSIBLE OFFICE: LIBRARY SERVICES

EFFECTIVE DATE: 10/28/1992

NEXT REVIEW DATE:

SUPERSEDES POLICY DATED:

BOARD OF REGENTS REPORTING (CHECK ONE):

PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM):

PRESIDENTIAL REPORT (INFORMATION ONLY)

I. POLICY STATEMENT

GENERAL STATEMENT

Northern Kentucky University is committed to compliance with the United States Copyright Revision Act of 1976, as amended (Title 17 United States Code (USC) 101 et seq.) relating to reproduction of copyrighted materials. The unauthorized reproduction of copyrighted material is a serious violation of University policy as well as federal law.

SCOPE

These procedures apply to all reproduction of copyrighted material either for a purpose related to the University or by or upon University facilities. Reproduction shall include, but not be limited to, copying or duplication by photocopying of printed material; copying of video, audiocassette, reel, or other broadcast material; or duplication of software. Reproduction for purposes related to the University shall include, but not be limited to, materials reproduced for teaching, research, course presentation, extracurricular activities, broadcast media, and the like. University facilities include, but are not limited to, all machines, devices, and media capable of copying, duplicating, or reproducing copyrighted material in any form.

PHOTOCOPYING

Unauthorized Photocopying

Unauthorized photocopying is a violation of federal copyright law and therefore a violation of University policy.

Guidelines for Authorized Photocopying

The protection afforded by a copyright is subject to an exception for fair use of material, as set forth herein. Since a determination of fair use is made on the facts of the specific use, guidelines for fair use for classroom copying in not-for-profit educational institutions have been developed by the National Association of College Stores, Association of American Publishers, Association of American University Presses, Ad Hoc Committee on Copyright Law Revisions, and the Author-Publisher Group (Authors League, Inc.) These guidelines are adopted and attached as Exhibit A below. Exhibit B includes guidelines for educational uses of music. Photocopying pursuant to these guidelines conforms to University policy.

Compliance

Individual Responsibility

It is the individual requestor's responsibility to assure that all photocopies of copyrighted material which he/she reproduces or causes to be reproduced either fall within the doctrine of fair use or have been cleared for use with the holder of the applicable copyright. Individuals photocopying or requesting photocopying of any written material for any purpose associated with the University or utilizing any photocopying facilities of the University shall familiarize themselves with these University procedures and shall complete a "reproduction of copyrighted materials" form. If individuals have any question as to whether their proposed photocopying constitutes a fair use of copyrighted materials pursuant to the attached guidelines, they shall request permission from the publisher. A sample permission request is attached below as Exhibit C.

Department Responsibility

Each department shall be responsible to ensure that the University's photocopying procedures are disseminated to all appropriate employees. All completed "reproduction of copyrighted material" forms for proposed photocopying on University facilities shall be approved by the requestor's supervisor or department chair.

Bookstore

The University bookstore shall comply with the University's Photocopying Procedures. The bookstore will obtain permission letters for all copyrighted components of anthologies which will be assembled to be sold through the bookstore. The standard textbook ordering deadlines must be met in order to allow the bookstore to secure permission for use of copyrighted material in anthologies.

Software

General

A computer program is defined as a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

A computer program, also known as computer software, is copyrightable, and subject to the copyright laws of the United States. No person in possession of a particular copy of a computer program may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of the computer program (including any tape, disc or other medium embodying such program) by rental, lease or lending, or by any other act or practice in the nature of rental, lease or lending.

The purchase of computer software entails the grant of a license to the purchaser and other authorized users to use the computer program consistent with the terms of the license. A violation of the terms of the license can be an infringement of the copyright of the owner of the computer program.

Unauthorized Reproduction

Computer software utilized for University purposes may not be reproduced, nor may computer software be copied on University facilities, except as set forth below:

- With express permission of the owner of the copyright, either as set forth in the license accompanying the software, or by direct authorization in writing from the copyright owner; and
- The authorized user(s) may make one back-up copy to be held for his/her own use as an archival copy in the event the original fails to function and not inconsistent with the license - provided however, that back-up copies may not be used on a second computer when the original software is in use.

Broadcast Material and Recorded Video or Sound

The requirements and limits under federal copyright laws for reproduction of phonorecords, broadcast material, videocassettes, audiocassettes, CDs and DVDs by libraries and archives are specifically set forth in Title 17

United States Code (USC) Sections 108 through 112. All University employees responsible for reproduction of these items shall familiarize themselves with the statutes. Federal law and University policy require copyright law notices to be conspicuously displayed and consistent with this policy.

Copyright Notices

Equipment Notice

A notice concerning copyright shall be conspicuously affixed to each piece of equipment capable of reproducing copyrighted material (with the exception of computers) and which shall state the following:

NOTICE: The making of copies may be subject to copyright law. Violation of copyright law can subject the violator to civil and criminal penalties for copyright infringement.

Display Warning of Copyright

A “display warning of copyright restrictions” shall be displayed at the places where orders for copies or phonorecords, or tapes (audio or visual) are accepted by University copying services, all campus libraries, media services, and archives. The text of the notice of warning is below.

An “order warning of copyright restrictions” is a notice which shall be included on printed order forms supplied by campus libraries, copying services, archives, and media services and used by their patrons for ordering copies, phonorecords, or tapes (audio or visual). The text of the warning is below.

The warning notices shall read as follows:

Notice: Warning Concerning Copyright Restrictions - 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 other reproduction. One of these specified 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.

NKU reserves the right to refuse to accept a copy order if, in its judgment, fulfillment of the order would involve violation of copyright law.

The display warning of copyright restrictions shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

The order warning of copyright restrictions shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

Violation

Sanction

Violation of these procedures constitutes a violation of federal copyright law and University policy, which may result in disciplinary action to include termination of student status, employment, or visitor status at the University.

Department Responsibility

Each department shall be responsible to ensure that these procedures are disseminated to all appropriate employees and students. All completed "reproduction of copyrighted materials" forms for proposed copying on University facilities shall be approved by the requestor's supervisor or department head.

II. ENTITIES AFFECTED

Faculty, Staff, and Students

III. DEFINITIONS

Copyright

A copyright is an intangible right granted by statute to the author or creator of certain literary or artistic works, whereby he/she is vested for a period of time with sole and exclusive rights of ownership to the work, which rights include the right to publish and reproduce the work. The ownership rights granted by a copyright are qualified by the doctrine of "fair use."

Fair Use

Fair use is the privilege of one other than the owner of a copyright to use the copyrighted material in a limited and reasonable manner without the consent of the copyright holder and notwithstanding the monopoly granted by the copyright to the owner. In determining whether the use of a copyrighted work in a particular case is a fair use, the following must be considered:

- a. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- b. The nature of the copyrighted work;
- c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- d. The effect upon the potential market for or value of the copyrighted work.

IV. EXHIBITS

EXHIBIT A: GUIDELINES FOR AUTHORIZED PHOTOCOPYING

Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.B. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision; those types are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying that does not fall within the guidelines stated below may nevertheless be permitted under the criteria of fair use.

Guidelines

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his/her individual request for scholarly research or use in teaching or in preparation to teach a class:

- 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.

II. Multiple Copies for Classroom Use

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

- A. The copying meets the 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.

Definitions

Brevity

Each of the numerical limits stated in items (i) and (ii) below may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

- (i) 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.
- (ii) Prose: a) either a complete article, story, or essay of less than 2500 words, or b) an excerpt from any prose work of not more than 1000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
- (iii) Illustrations: one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
- (iv) "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 2500 words in their entirety. Item (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 percent of the words found in the text thereof, may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teacher; and
- (ii) 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.

Cumulative Effect

The limitations stated in items (ii) and (iii) below shall not apply to current news periodicals and newspapers and current sections of other periodicals.

- (i) The copying of material is for only one course in the school in which the copies are made.
- (ii) Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author; not more than three from the same collective work or periodical volume during one class term.

(iii) There shall be not more than nine (9) instances of such multiple copying for one course during one class term.

III. Prohibitions as to I. and II. Above

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or 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 materials.
- C. Copying shall not:
 - (1) Substitute for the purchase of books, publishers’ reprints, or periodicals;
 - (2) Be directed by higher authority;
 - (3) Be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of photocopying.

Agreed March 19, 1976

Ad Hoc Committee on Copyright Law Revision:

By Sheldon Elliott Steinbach.

Author-Publisher Group.

Authors League of America:

By Irwin Karp, Counsel.

Association of American Publishers, Inc.:

By Alexander C. Hoffman, Chairman,
Copyright Committee

EXHIBIT B: GUIDELINES FOR EDUCATIONAL USES OF MUSIC

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.B. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under the guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision; those types are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying that does not fall within the guidelines stated below may nevertheless be permitted under the criteria of fair use.

I. Permissible Uses

- A. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided that purchased replacement copies shall be substituted in due course.
- B. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole that would constitute a

performance unit such as a section, movement, or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.

- C. Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered, or lyrics added if none exist.
- D. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- E. A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright that may exist in the recording.)

II. Prohibitions

- A. Copying to create or replace or substitute for anthologies, compilations, or collective works.
- B. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like materials.
- C. Copying for the purpose of performance, except as in item I.A above.
- D. Copying for the purpose of substituting for the purchase of music, except as in items I.A and I.B above.
- E. Copying without inclusion of the copyright notice that appears on the printed copy.

EXHIBIT C: SAMPLE COPYRIGHT PERMISSION REQUEST

Copyrights and Permissions Department
Publishing Company
Address
City, State, Zip Code

Dear Copyrights and Permissions Coordinator:

I would like permission to copy the following for (use in my class next semester) / (use in an anthology to be distributed to my class):

- Author, editor, translator
- File, edition, volume number of book or journal
- Copyright date
- ISBN for books, ISSN for magazines and journals
- Material to be duplicated (pages, chapters, figures, and illustrations)
- Number of copies to be made
- Type of reprint (photocopy)
- Whether material will be used alone or combined with other material
- Name of college or university
- Course name and number
- Semester and year in which material will be used
- Instructor’s full name, address, and telephone number

I have enclosed a copy of this letter and a self-addressed, stamped envelope for your convenience in replying to this request.

Sincerely,

Faculty/Staff Member Signature

Permission granted:

Copyrights and Permissions Department Date