

Moravian College and Moravian Theological Seminary

Guidelines for the Academic Use of Copyrighted Material

Moravian College and Moravian Theological Seminary recognize the moral and ethical imperative and the legal necessity of compliance with copyright laws by faculty, administrators, staff, and students. All members of the Moravian College and Moravian Theological Seminary community are encouraged to become knowledgeable about copyright.

This document outlines Moravian College and Moravian Theological Seminary copyright guidelines. It provides basic copyright information and gives instructions for finding fuller information. The Copyright Act of 1976 and amendments including the Digital Millennium Copyright Act plus additional information are available through links in this document and in Reeves Library.

These copyright guidelines are not a legal document but, if followed carefully, you will be less likely to be sued for copyright infringement. Please note that anyone who initiates a request which will result in copyright infringement or who actually commits copyright infringement is liable for legal action. Members of the Moravian College and Moravian Theological Seminary community who knowingly infringe on copyright do so at their own risk.

Additional copyright related policies:

- Seminary's *Student Handbook* found at <http://www.moravianseminary.edu/handbook/Policies/POLWWW.htm>
- *The Moravian College Student Handbook, Academic Honesty* found at <http://www.moravian.edu/studentLife/handbook/academic2.htm>
- Center for Information Technology's *Policy for Acceptable Use of Computing Resources* found at http://home.moravian.edu/public/cit/_policies/aup.doc

What is a Copyrightable Work?

To be copyrightable, the law stipulates that the work must 1) be an *original work of authorship* and 2) be *fixed in a tangible medium of expression by or under the authority of the creator*.

Original work of authorship means that the author must be the creator of the work and not have copied it from someone else. 'Create' is interpreted very loosely and needs only a minimum effort. Not included are ideas, facts like phone listings or news events, exact photographs of art works, titles, short phrases, etc. However, these items may be copyrightable if the expression, layout, and/or arrangement use them in a creative way.

A *tangible medium of expression* includes, print, tape, and other physical means. It also means saving the work on a computer's hard drive or to a disk or posting works on the Internet. *By or under the authority of the creator* excludes the unauthorized (bootleg) taping of a concert, speech, etc.; the copying (pirating) of a film or CD; or unauthorized off-air or Internet copying.

These categories of works are covered: literary, musical, dramatic works, pantomimes and choreographic works, pictorial graphic and sculptural works, movies and other audio-visual works including sound recordings. Architectural works were added in 1990. These categories are very broadly interpreted and cover almost everything.

If a work meets the two stipulations, copyright is *immediate and automatic*. Works do not have to be published nor do they have to have a copyright notice attached. This is a change in the law; previously, works did have to be published with a printed copyright notice. Works no longer have to be registered with the Copyright Office though doing so will provide protection in the event of a copyright infringement case.

The creator of the original work is the *copyright owner*. Copyright can be transferred to another party (i.e. a publisher) with the signing of a legal document. Authors should not sign away all rights in the standard publisher's contract without question because there is often room for negotiation. E.g. a time limit can be set at which time copyright reverts to the creator, or the creator can reserve the right to make copies for his/her own use.

Works for hire are different – copyright belongs to the employer if the work was done by an employee acting within the scope of his/her employment. Faculty members are employees of the institution and works produced belong to the employer unless specifically stated otherwise in their employment contract. This includes published works, unpublished teaching materials, websites, etc.

In order for the copyright of works done for hire by independent outside contractors (photographers, programmers, etc.) to belong to the employer, there needs to be a signed contract which specifies the work to be done and which includes transfer of copyright. A verbal agreement does not have legal standing.

Works produced by the U.S. government are not copyrightable (Section 105) when produced by government employees as part of their official duties. This includes laws, reports, court decisions, speeches, pamphlets, etc. Some exceptions do apply; e.g. work done under a federal grant is copyrightable.

Copyright owners' rights

The copyright owner's rights are called the "bundle of rights" and only the copyright holder has them:

1. Right to reproduce or to authorize reproduction including photocopying, microfilming, scanning, or any other fixed method
2. Right to prepare derivative works
3. Right to distribute by sale, lease, or lending
4. Right to perform publicly a literary, musical, dramatic, choreographic, motion picture or other audiovisual work
5. Right to display publicly any of the above plus pictorial, graphic, or sculptural works

Anyone else must have the copyright holder's permission unless the copying falls under the fair use proviso, one of the other exceptions, or the work is in the public domain. Infringement occurs when any one of the rights is violated.

Public Domain

After a period of time copyrights expire and works go into the public domain. The Copyright Act of 1976 and amendments extended the period of time that copyright remains in effect; with some exceptions, works are covered during the life of the author and for 70 years afterwards. For specific information go to “When works pass into the public domain” at <http://www.unc.edu/~unclng/public-d.htm>

New editions, critical editions, reprints, etc. are not in the public domain if they contain new material. However, the actual text of a reprint may be in the public domain depending on whether it was changed or improved in a significant way, e.g. reformatted for design purposes.

Exceptions

There are several exceptions built into the law. The most familiar of these is fair use (Section 107); another one is the library copying exception (Section 108).

Fair use

Fair use must take into consideration these four factors: 1) **Purpose** of the use; 2) **Nature** of the original work; 3) **Amount** used; and 4) **Effect** on the market or value of the original. They do not have to all be present but preponderance “on the whole” is used to determine whether the use is fair use or not.

Is the **purpose** commercial (no) or educational (yes)?

What is the **nature** of the original work? Use of nonfiction is more likely to be fair use than use of a work of fiction or other literary work.

What **amount** of the original is being used? The law is vague on this point and depends on usage. The 5-10% number we hear is not in the law but just a guideline.

What is the **effect** on the market or value of the original? Will the copying mean fewer copies sold by the publisher? This is also vague, difficult to ascertain, and can change as circumstances change.

Prof. Kenneth Crews has a Checklist for Fair Use at www.copyright.iupui.edu/checklist.htm to help faculty members and others determine if a proposed use is fair use or not. It is also in his book **COPYRIGHT LAW FOR LIBRARIANS AND EDUCATORS** on page 124.

The University of Minnesota has a “Fair Use Analysis Tool” at www.lib.umn.edu/copyright/checklist.phtml

Guidelines for Classroom Copying in Not-for-Profit Institutions

Section 107 allows copying for educational purposes to be considered fair use, but there are restrictions depending on the circumstances. This is not a blanket exemption and educational institutions must adhere to the guidelines. See Circular 21 of the Copyright Office www.copyright.gov for details.

Copyright Office guidelines:

A single copy may be made of the following for the teacher’s own use:

- One chapter from a book
- One article from a periodical or newspaper
- Short story, short essay, short poem
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

Multiple copies may be made for classroom use:

- Not more than one copy per student
- Amount copied is brief (one chapter, one article, one excerpt from a collective work, one chart, graph, diagram, etc.)
- Each copy has to include the copyright notice from the original work

In general, the law is broad, vague, and subject to interpretation. The stronger the case can be made for an educational purpose, the more likely the use will be fair use.

Library exception

Section 108 covers reproduction by libraries and archives. It is also vague but essentially it allows libraries to make copies under certain circumstances such as reserves, preservation, replacement, interlibrary loan, and for the personal use of library users.

Resources in Reeves Library

Alpern, Andrew. *101 Questions about Copyright Law*. 2nd edition. Mineola, NY: Dover Publications, Inc., 2002. (Ref KF2995 .A427 2002)

Crews, Kenneth D. *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions*. Chicago: American Library Association, 2006. (Ref KF2995 .C74 2006)

Heller, James S. *The Librarian's Copyright Companion*. Buffalo, NY: William S. Hein & Co., Inc., 2004. (Ref KF2995 .H45 2004)

Russell, Carrie. *Complete Copyright: An Everyday Guide for Librarians*. Chicago: American Library Association, 2004. (Ref KF2995 .C57 2004)

Talab, R.S. *Commonsense Copyright: A Guide for Educators and Librarians*. 2d Ed. Jefferson, NC: McFarland & Company, Inc., Publishers, 1999. (Ref KF2994 .T36 1999)

Search for the subject keyword 'copyright' for additional works in Reeves. Use EZBorrow or WorldCat to find books not in Reeves. The booklet, *Questions & Answers on Copyright for the Campus Community*, 6th edition, Association of American Publishers, 2003, is a guide to helping faculty and other academic users conform to the copyright laws. Copies are available at Reeves' Reference Desk or from department chairs.

Fair Use Resources

U.S. Copyright Office. <http://www.copyright.gov/circs/circ21.pdf>
Circular 21, **Reproduction of Copyrighted Works by Educators and Librarians**

American Library Association. **Fair Use and Electronic Reserves**.
<http://www.ala.org/ala/washoff/WOissues/copyrightb/Default1964.htm#pages>

Click on **Fair Use and Electronic Reserves**. This site has other information as well.

Crews, Kenneth D. **Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions**. Chicago: American Library Association, 2006.

Harper, Georgia K. "Copyright Endurance and Change." *Educause Review* 35:6 (2000).

<http://www.educause.edu/apps/er/erm00/erm006.asp>

Harper, Georgia. "Fair Use of Copyrighted Materials"

<http://www.utsystem.edu/OGC/IntellectualProperty/copypol2.htm>

Indiana University. Checklist for Fair Use. <http://copyright.iupui.edu>
Click on **Fair Use Checklist**. This site has other information as well.

How to Request Permission:

If the proposed use does not fall under fair use, works may be used with permission of the copyright owner. It is sometimes difficult to determine who that is but a good faith effort must be made. You still have to make an effort for so-called "orphan works" for which the copyright owner is not stated or cannot be found. To protect yourself in case of an infringement suit, keep a log and paper records of attempts to find and contact the copyright owner. Go to www.copyright.gov/orphan for help on orphan works.

Permission is usually granted for educational purposes. It may be granted for a one time use or perpetual use and it is important for that to be clearly stated in the agreement.

See Kenneth Crews' *Copyright Law for Librarians and Educators* (in Reeves, Ref KF2995 .C74 2006) for further information on permission. See "Dead End," page 111-2 for advice on what to do if you cannot find the copyright holder, are denied permission, get no response to your request, or permission is going to be too costly. The Indiana University-Purdue University, Indianapolis has an excellent Copyright Management Center site, directed by Prof. Crews: www.copyright.iupui.edu/permhome.htm
--Click on "Permissions Information"

Sample letters for requesting permission are available in:

Bruwelheide, Janis H. *The Copyright Primer for Librarians and Educators*. 2d. Ed. Chicago: American Library Association and The National Education Association, 1995, (in Reeves, Ref KF2989.5 .B78 1995), p. 93-95, “Requesting Permission for Academic Copying.”

Crews, Kenneth D. *Copyright Law and Graduate Research: New Media, New Rights, and Your New Dissertation*. 2d. Ed. Ann Arbor, MI: Bell & Howell Information and learning, 2000. Available from <http://www.umi.com/umi/dissertations/copyright> Click on: “Appendix A: Sample Permission Letter”

Dukelow, Ruth H. *The Library Copyright Guide*. Washington, DC: Association for Educational Communications and Technology, 1992, (in Reeves, Ref KF2989.5 .D85 1992), p. 123, “Sample Permission Letter.”

Talab, R.S. *Commonsense Copyright: A Guide for Educators and Librarians*. 2d Ed. Jefferson, NC: McFarland & Company, Inc., Publishers, 1999, (in Reeves, Ref KF2994 .T36 1999), p. 142-145.

Links to Copyright Web Sites

U.S. Copyright Office. www.copyright.gov

U.S. Copyright Office. *The Copyright Act of 1976*
<http://www.copyright.gov/title17/>

U.S. Copyright Office. **Summary of the 1998 Digital Millennium Copyright Act** <http://www.copyright.gov/legislation/dmca.pdf>

U.S. Copyright Office. *Copyright Basics, Circular 1*. Washington, D.C., 1998. www.copyright.gov/circs/circ01.pdf
Excellent primer on copyright. See other circulars for other topics.

The Indiana University-Purdue University, Indianapolis has an excellent Copyright Management Center site, directed by Prof. Kenneth Crews:
www.copyright.iupui.edu/permhome.htm

Templeton, Brad. *10 Big Myths about Copyright Explained*.
www.templetons.com/brad/copymyths.html

This web site gives excellent explanations of copyright issues, including the issue of displaying links to web sites without the author's permission.

When Works Pass into the Public Domain www.unc.edu/~unclng/public-d.htm

The law changes, depending on the year the work was published.

Copyright Clearance Center www.copyright.com/default.asp

Fee-based service which gets permission for faculty to reproduce copyrighted works for class use.

Wellesley College Copyright Policy

www.wellesley.edu/Library/copyright.html

Scroll down the policy page to find frequently asked questions and answers about classroom and library reserves copyright issues.

University of Georgia Regents Guide to Understanding Copyright and Educational Fair Use www.usg.edu/legal/copyright

More excellent frequently asked questions and answers, including those on non-print media, provided by University System of Georgia.

Harper, Georgia. ***Crash Course in Copyright.***

www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm

Courtesy of the University of Texas System, Office of General Counsel: Intellectual Property.

Gasaway, Laura N. ***Copyright Law in the Digital Age: Course Materials.***

www.unc.edu/~unclng/gasaway.htm A print version of this document is also available in Reeves. (Ref KF2995 .G38 2000).

Two additional library documents contain guidelines for use of Blackboard and media:

**COPYRIGHT GUIDELINES FOR ELECTRONIC RESOURCES IN
BACKBOARD**

COPYRIGHT GUIDELINES FOR MEDIA

Rita Berk and Bonnie Falla

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