

Policies of the University of North Texas	Chapter 8
06.050 Photocopying for Classroom Research and Library Use	Intellectual Property

Policy Statement. The purpose of this policy is to provide the faculty and staff with a brief explanation of when the photocopying of copyrighted material is permitted under the fair use doctrine. The copyright law applies to all forms of photocopying, whether it is undertaken at a commercial copying center, at the university's central or departmental copying facilities, or at a self-service machine. This policy does not address other library photocopying which may be permitted under other sections of the copyright law.

The university does not condone a policy of photocopying instead of purchasing copyrighted works where such photocopying would constitute an infringement under the copyright law, but it does encourage faculty members to exercise good judgment in serving the best interests of students in an efficient manner.

Application of Policy. All Faculty and Staff.

Definitions. None.

Procedures and Responsibilities.

I. The Copyright Act and Photocopying

The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included within the Copyright Act is the "fair use" doctrine which allows, under certain conditions, the copying of copyrighted material. While the act lists general factors under the heading of "fair use" it provides little in the way of specified directions for what constitutes fair use.

The law states:

17 u.s.c. sec. 107. Limitations on exclusive rights: Fair use.

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phone records 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, 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.

II. Unrestricted Photocopying

- A. Uncopyrighted Published Works Writings published before January 1, 1978, that have never been copyrighted may be photocopied without restriction.
- B. Published Works with Expired Copyright
- C. Writings with expired copyrights may be photocopied without restriction. All copyrights prior to 1906 have expired. Copyrights granted after 1906 have been renewed; however, the writing probably will not contain notice of renewal.
- D. Unpublished works, such as theses and dissertations, may be protected by copyright. If such a work was created before January 1, 1978, and has not been copyrighted or published and does not contain a copyright notice, the work is protected under the new act for the life of the author plus 50 years, but in no case earlier than December 31, 2002. Works created after January 1, 1978, and not published enjoy copyright protection for the life of the author plus 50 years.
- E. U.S. Government Publications. All U.S. Government publications with the possible exception of some National Technical Information Service publications less than five years old may be photocopied without restrictions, except to the extent they contain copyrighted material from other sources.

III. Permissible Photocopying of Copyrighted Works

The Copyright Act allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a fair use of the material. The guidelines in this report discuss the boundaries for fair use of photocopied material used in research or the classroom, or in a library reserve operation. Fair use cannot always be expressed in numbers--either the number of pages copied or the number of copies distributed.

A. Research Uses

Generally, instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

1. A chapter from a book;
2. An article from a periodical or newspaper;
3. A short story, short essay or short poem, whether or not from a collective work;

4. A chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

Most single-copy photocopying for personal use in research--even when it involves a substantial portion of a work--may constitute fair use.

B. Classroom Uses

Primary and secondary school educators have, with publishers, developed the following guidelines, which allow a teacher to distribute photocopied material to students in a class without the publisher's prior permission, under the following conditions:

1. The distribution of the same photocopied material does not occur every semester;
2. Only one copy is distributed for each student which must become the student's property;
3. The material includes a copyright notice on the first page of the portion of material photocopied;
4. The students are not assessed any fee beyond the actual cost of the photocopying.

In addition, the educators agreed that the amount of material distributed should not exceed certain brevity standards.

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work.

C. Library Reserve Uses

At the request of a faculty member, the library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face to face teaching discussed above.

If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article or an entire chapter from a book, or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

1. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level;
2. The number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material;
3. The material should contain a notice of copyright;
4. The effect of photocopying the material should not be detrimental to the market for the work.

A faculty member also may request that multiple copies of photocopied, copyrighted material be placed on reserve if there is insufficient time to obtain permission from the copyright owner.

D. Uses of Photocopied Material Requiring Permission

1. Repetitive Copying. The classroom or reserve use of photocopied materials in multiple courses or successive years normally will require advance permission from the owner of the copyright.
2. Copying for Profit. Faculty should not charge students more than the actual cost of photocopying the material.
3. Consumable Works. The duplication of works that are consumed in the classroom, such as standardized tests, exercises and workbooks, normally requires permission from the copyright owner.
4. Creation of Anthologies as Basic Text Material for a Course. Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course in most instances will require the permission of the copyright owners. Such photocopying is more likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use.

E. Infringement

Normally, an infringer is liable to the copyright owner for the actual losses sustained because of the photocopying and for any additional profits of the infringer. Where the monetary losses are nominal, the copyright owner usually claims statutory damages instead of the actual losses. The statutory damages may reach as high as \$10,000 (or up to \$50,000 if the infringement is willful). In addition to suing for money damages, a copyright owner usually can prevent future infringement through a court injunction.

References and Cross-references. None.

Forms and Tools. None.

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*Format only