

PURDUE UNIVERSITY
WEST LAFAYETTE, INDIANA
Office of the President

1 November 1977

EXECUTIVE MEMORANDUM No. B-53

To: All Members of the University

Re: Principles and Procedures Regarding Duplication of Copyrighted Materials Used for Teaching and Research

PURPOSE

This memorandum is intended to bring to your attention the essential elements of Public Law 94-553 as they relate to the responsibilities and activities of all employees of Purdue University in the areas of teaching and research.

NOTICE

The General Revision of the Copyright Law (PL 94-553) is in effect as of 1 January 1978. The language of the revision is quite specific, but is still open to interpretation by the courts. As regulations from the Library of Congress Copyright Office and court interpretations which could amend the information and guidance provided by this memorandum become available, addenda will be issued.

Because the specific categories of materials that can be protected by copyright, the exclusive rights of the copyright holder, and the duplication of copyrighted material directly affect all University personnel, this memorandum should be retained for reference.

Questions concerning this memorandum and the General Revision of the Copyright Law should be directed to the Head, Copyright Section, Purdue Research Foundation (telephone 749-2112).

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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 which may exist in the sound recording.)

(b) Prohibitions

- (1) Copying to create or replace or substitute for anthologies, compilations, or collective works.
- (2) 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 material.
- (3) Copying for the purpose of performance, except as in a. (1) above.
- (4) Copying for the purpose of substituting for the purchase of music, except as in a. (1) and a. (2) above.
- (5) Copying without inclusion of the copyright notice which appears on the printed copy.

Arthur G. Hansen
Arthur G. Hansen
President

(c) Be repeated with respect to the same item by the same teacher from term to term.

(4) No charge shall be made to the student beyond the actual cost of the photocopying.

3. Guidelines for published music

a. Permissible uses

(1) Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

(2) (a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement, or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is (1) confirmed by the copyright proprietor to be out-of-print, or (2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

(3) Printed copies which 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.

(4) 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.

(5) 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

I. SCOPE OF MATERIALS

A. Categories of materials afforded protection under the revision are:

1. Literary works
2. Musical works, including any accompanying words
3. Dramatic works, including any accompanying music
4. Pantomimes and choreographic works
5. Pictorial, graphic, and sculptural works
6. Motion pictures and other audiovisual works (including video tapes)
7. Sound recordings in any form

B. The copyright marking (©, Copyright, Copr., name of copyright owner(s), year) protects the above objects and/or works upon which the notice is placed but in no case does protection extend to any idea, procedure, process, principle, or discovery.

C. Copyright protection is afforded compilations, that is, a work formed by the collection and assembling of preexisting materials arranged in such a manner that the whole constitutes an original work of authorship. Permission is required before copyrighted material can be compiled. The copyright in a compilation or derivative work (the recasting, transforming, or adapting of existing work in such a way as to represent an original work) extends only to the material contributed by the author, not the preexisting material.

II. EXCLUSIVE RIGHTS IN COPYRIGHTED MATERIALS

The owner of the copyright has the exclusive rights to do and authorize any of the following:

- A. To reproduce the copyrighted work in copies or phonorecords;
- B. To prepare derivative works based upon the copyrighted work;
- C. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

D. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

E. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

III. DUPLICATION OF COPYRIGHTED MATERIALS FOR EDUCATIONAL PURPOSES

Materials protected by a copyright may be duplicated for educational purposes by (1) obtaining written permission from the owner of the copyright, or (2) asserting the "fair use" doctrine, that is, the use of copyrighted materials without authorization of the copyright holder but under certain circumstances deemed fair by either statutory limits or judicial processes or both.

A. Written Permission

Request for written permission should be directed to the owner of the copyright and should contain the following:

1. Title, author and/or editor, and edition of materials to be duplicated
2. Exact material to be used, giving amount, page numbers, chapters, and, if possible, a photocopy of the material
3. Number of copies to be made
4. Use to be made of duplicated materials
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold
7. Type of reprint (ditto, photocopy, offset, typeset).

Written permission is necessary when making systematic duplications and any other time "fair use" is not applicable. Do not request blanket permission.

B. "Fair Use"

The fair use of a copyrighted work, including such use by any form of reproduction for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

(c) Cumulative effect

- (i) The copying of the 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, nor more than three from the same collective work or periodical volume during one class term.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

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

c. Prohibitions as to (a) and (b) above

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

- (1) 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.
- (2) 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.
- (3) Copying shall not:
 - (a) Substitute for the purchase of books, publishers' reprints, or periodicals;
 - (b) Be directed by higher authority;

(a) Brevity

- (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 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 in (i) and (ii) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

- (iii) Illustration: 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 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 produced.

(b) 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

However, in determining fair use, considerations and guidelines have been developed.

1. Factors to be considered

- a. The purpose and character of the use, including whether such use is of 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; and
- d. The effect of the use upon the potential market for or value of the copyrighted work.

Note that the factors stipulated are the minimum to be considered when claiming fair use for duplicated materials. Also note that the reference to "non-profit educational purpose" is but a part of just one of the factors to be considered.

2. Guidelines for periodicals and books

a. Single copying for teachers

- (1) Single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class;
- (2) A chapter from a book;
- (3) An article from a periodical or newspaper;
- (4) A short story, short essay, or short poem whether or not from a collective work;
- (5) A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

b. Multiple copies for classroom use

Multiple copies (not to exceed in any one event more than 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:

- (1) Each copy includes a notice of copyright;
- (2) Copying meets the test of brevity, spontaneity, and cumulative effect test as defined below: