

Appendix I

UNH Primer on Copyright Law & Recommended Procedures

The following information has been adapted from the web sites of the National Association of College Stores (<http://www.nacs.org>) and The Software and Information Industry Association (<http://www.siiia.net>) and is used here by permission. ©2000; also 'Questions and Answers on Copyright for the Campus Community,' Copyright 1997, National Association of College Stores, and Software Publishers Association. Detailed information about copyright can be found at www.loc.gov/copyright.

Copyright Information

Q. What types of works can claim copyright protection?

A. Copyright protection exists in "original works of authorship" which are "fixed in a tangible medium of expression." Among the types of works that are subject to copyright protection are literary, dramatic, musical, choreographic and pictorial, graphic, pantomimes, sound recordings, sculptures, motion pictures, and audio-visual. These categories include reference works (including dictionaries), videocassettes, and computer programs and databases.

Copyright protection does not include facts, ideas, procedures, processes, systems, concepts, principles, or discoveries, although these may be protectable under patent or trade secret laws. However, the literary or other form of expression and detailed organization of these ideas is covered by copyright.

Q. Is all copying by educational institutions fair use?

A. No. There is no blanket exemption from liability for infringement by educational institutions or for educational uses. Rather, the particular use must qualify as a fair use.

Q. What kind of copying is permitted under the Fair Use law?

A. The doctrine of "fair use" permits certain limited reproduction of copyrighted works for educational or research purposes without the permission of the copyright owner. In determining whether a particular reproduction of copyrighted material is "fair use," courts consider the following four factors:

1. The extent to which the use is for non-profit, educational purposes as opposed to commercial purposes;
2. The nature of the copyrighted work - published or unpublished; fiction or non-fiction. In general, it is more difficult to establish "fair use" of unpublished works and works of fiction;

3. The amount and substantiality of the copying relative to the original work, not the reproduced work;
4. The effect of the use of the reproduced work upon the market for or the value of the copyrighted work.

The "fair use" test is flexible, and making determinations based upon application of the above four factors may be a difficult and uncertain process. Because of the uncertainty inherent in the four-factor test, various guidelines have been developed that represent "the minimum standards of educational fair use" under the copyright law. These guidelines are not the law, and indeed the law may allow for broader copying than is provided for by the guidelines. The safest course, however, and the course adopted by the University, is to abide by the following guidelines, avoiding thereby the risk of challenging the less clearly defined territory of "fair use."

1. Single copying for faculty use in scholarly research or teaching (including preparation):
 - 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, cartoons or picture from a book, periodical, or newspaper.
2. Multiple copies for classroom use (not to exceed more than one copy per student) provided that copying meets the following tests:
 - A. Brevity
 1. poetry: a complete poem if less than 250 words or an excerpt of not more than 250 words;
 2. prose: a complete article, story or essay of less than 2,500 words, or an excerpt of at least 500 words and not more than 1,000 words or 10% of the work, whichever is less;
 3. illustration: one chart, graph, diagram, drawing, cartoon or picture per book or periodical;
 4. special works - such as children's books - where the entire length is less than 2,500 words: only excerpts of not more than two published pages and containing not more than 10% of the words found in the entire work may be copied.
 - B. Spontaneity
 1. copying must be inspired by and at the request of the individual faculty member;
 2. inspiration and decision to use the work and the time of its classroom use are so close as to preclude a timely reply to a request for permission.
 - C. Cumulative Effect
 1. material copied is for use in one course only;
 2. 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 during one class term;
 3. not more than nine such instances of multiple copying for one course during one class term;
 4. the limitations set forth in (2) and (3) shall not apply to current news periodicals and newspapers and current news sections of other periodicals;
 5. each copy includes a notice of copyright.

3. General prohibitions
 - A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works.
 - B. There shall be no copying of or from works intended to be consumable in the course of study, i.e. workbooks, exercises, standardized tests, etc.
 - C. Copying shall not:
 1. be a substitute for the purchase of books, publishers' reprints or periodicals;
 2. be directed by higher authority;
 3. be repeated with respect to the same items by the same faculty member from term to term.
 - E. No charge shall be made to the student beyond the actual cost of photocopying.

Q. What are the options for obtaining copyright clearance of material used to make up my course packet?

A. Submit your course packet material to the UNH Printing Services Copyright Clearance Service located at the MUB Copy Center. They will clear all copyrights and include the royalty fees with the course packet price. The royalty fee can add 5 to 10 cents to the cost of each page.

You can take responsibility for clearing the appropriate copyrights. UNH Printing Services will include the royalty fees with the course packet price and transfer monies collected to your department for payment to publishers.

Q. What are the penalties for copyright infringement?

A. Civil and criminal penalties may be imposed for copyright infringement. Civil remedies can include an award of monetary damages (substantial statutory damages, which in cases of willful infringement, may total up to \$100,000 per work infringed, or actual damages, including the infringer's profits), an award of attorney's fees, injunctive relief against future infringement and the impounding and destruction of infringing copies.

While under some circumstances educators are not required to pay statutory damages, nonetheless, they may be responsible for paying the copyright owner actual damages caused by their infringement, as well as attorney's fees.

Q. Will faculty members who assign customized course anthologies, or the colleges at which they teach, be liable for copyright infringement?

A. Anyone who violates any of the exclusive rights of the copyright owner is an infringer. In the Kinko's and MDS suits, the publishers sued commercial copy shops that had profited from selling publishers' copyrighted works without obtaining permission. The copy shops in these cases had solicited faculty business and given assurances to faculty that the copyright law would be observed.

In 1983, a number of publishers coordinated a suit against New York University and nine professors for creating similar course packs. The action was settled with the adoption of certain procedures by NYU. Since that time, faculty and school administrations have generally been sensitive to the copyright law and have widely followed the Guidelines for Classroom Copying <http://www.nacs.org/public/copyright/appendix.asp> that the court confirmed in the Kinko's case to be relevant. Other cases have confirmed that educational use can be infringing and that faculty and institutions can be liable for uses that are not fair.

Q. What will happen if UNH is sued and suffers monetary damages as a consequence of individual faculty member violation(s) of copyright law?

A. The RCM unit will have to pay the financial damages.

Q. Once copyright permission is secured do I have to do it again the following year?

A. By law permission is for one time use only. If you decide to use the same packet next semester or next year, you need to go through the entire process again. Research time will be reduced, but publishers must be contacted and paid again.

Legal Use of Software

Q. What are the laws with regard to copying software?

A. Generally, copyright law applies to computer software the same as it does to most other forms of works. However, the copyright law permits the owner to make a copy for archival purposes so long as the copy is destroyed once the original software is transferred or sold. In limited circumstances, a copy or adaptation may be made as an essential step in using the program in a computer. It is important to note that, in most cases, when buying the software, you are actually acquiring only a license to use the software. The license governs the permitted uses of the software.

Q. What is a license agreement, and how does it relate to copyright?

A. A license agreement allows the purchaser to use the software subject to the terms of the license. The purchaser has not bought the software but only licensed it. The purchaser does not have the right to copy or transfer the software to another party unless provided for in the license agreement.

Q. What does the expression "pirating software" mean?

A. It means making an impermissible copy of software.

Q. Does fair use apply to computer programs?

A. Yes, but because most copying involves the entire computer program, rather than a portion of it, the unauthorized copying will rarely be considered fair use.

Q. Can I take a piece of software owned by UNH and install it on my personal computer at home?

A. A good rule of thumb to follow is one software package per computer, unless the terms of the license agreement allow for multiple use of the program. But some software publishers' licenses allow for "remote" or "home" use of their software. If you travel or telecommute, you may be permitted to copy your software onto a second machine for use when you are not at your office computer. Check the license carefully to see if you are allowed to do this.

Q. Can I purchase a single licensed copy of a piece of software and load it onto several machines?

A. This is known as "softlifting," which is contrary to the terms of a license agreement. This includes sharing with friends and co-workers and installing software on home/laptop computers if not allowed by the license.

Q. Can I give or sell a "backup copy" of a licensed program to other people?

A. A "backup copy" can be used for "archival purposes only." This copy cannot be sold or distributed to another party without the consent of the copyright owner.

Q. What if a department owns an old version of a software program and wants to purchase additional copies but the program is now unavailable? Can the old software package be copied in such a case?

A. The software program cannot be copied without first obtaining the permission of the publisher or copyright owner. Some software publishers permit copies to be made in such cases if additional licenses of the new version are purchased. Other publishers allow copies of the old program to be made if upgrades are purchased. Many publishers offer educational discounts that may make it economical to upgrade all older versions.

Q. Is it legal to install an original equipment manufacturer (OEM) version of software on a computer other than the one on which the software came?

A. OEM software is only distributed when sold with specified accompanying hardware. When these programs are copied and sold separately from the hardware, this is a violation of the contract with the publisher and is illegal.

Q. Can I rent a piece of software from a store?

A. The Software Rental Amendments Act of 1990 (Public Law 101-650) prohibits the rental, leasing, or lending of software without the express permission of the copyright holder.

Q. Can computer software be resold?

A. If a copy of a computer software program is purchased instead of obtained through a license, the purchaser has the right to transfer that one copy of the material. The "First Sale Doctrine" allows the copyright owner to control the initial sale or distribution of the material to the public, but once title to the material changes hands, the copyright owner has no right to control the subsequent resale or transfer of that one copy.

The First Sale Doctrine applies only to copies of the material that were lawfully made or obtained. Thus, if the computer software was a pirated copy, the purchaser does not have the right to subsequently transfer or sell that copy.

If the computer software is obtained through a license, the user should consult the license agreement to determine whether the copy may be resold.

Q. Is there any way to manage networks to ensure that software is not copied?

A. Yes. A school can purchase "metering" software which tallies the number of license agreements that the school owns and the number of copies made. Also, software-auditing programs are available for purchase. These programs keep a log of existing license agreements and tell users what software is installed on their hard drive or server. These programs help to manage software ownership and reduce the possibility of accidentally pirating software. Information about these programs is available from the Software Publishers Association.

In this regard, use by Computing & Information Services of a computer program named Tally to facilitate inventorying of desktop hardware and software configurations has been approved by the Academic Computing Advisory Committee and by the Deans' Council. Implementation will proceed this Fall '00 semester. Use of Tally will inform decisions about needs for desktop

computer replacements and will allow CIS Client Services to make configuration-specific diagnoses and recommendations for Help Desk clients.

For information on multiple user licensed statistical software that UNH makes available for use on campus, please point your web browser to <http://at.unh.edu/clusters/> and click on Site Licensed Software.

Copyright and Library Materials

Q. What about copying library materials?

A. The Library follows the same "fair use" doctrine for its general collections. Individuals take responsibility for any copying done by them on Library premises. In addition, the Library has specific guidelines for materials put on reserve with royalties being paid through the Copyright Clearance Center.

Q. What about Interlibrary loan?

A. Interlibrary loan has specific guidelines. "Fair use" applies overall, but the number of articles that can be copied from recent journals is limited as well as the amount that can be copied from a single issue. When necessary, copyright is obtained through the Copyright Clearance Center.

Q. What about other media in the Library?

A. Videos have very stringent copying regulations. Commercial videotapes owned by the Library or faculty member may be placed on Reserve under certain conditions. The use of off-air recordings is extremely limited and must meet strict criteria. (The Reserve Desk has the complete guidelines.) Dubbing from sound recordings is in accordance with the "fair use" guidelines. Manuscripts and other special collections materials have specific copying restrictions based on agreements with the donors. Special Collections and Archives will assist in any use of these materials.

Q. Do electronic resources come under the copyright law?

A. The rights to copy from the Library's electronic resources are negotiated with the individual publishers and vendors as part of the license agreements. In general, readers must apply the same principles of "fair use" to these works that they would to a published, printed archive. Electronic materials may be used online or downloaded for personal or educational use within the limitations imposed by the "fair use" doctrine. No other distribution or mirroring of the texts, images or recordings is allowed. They may not be published commercially (in print or electronic form), edited, or otherwise altered without the permission of the creator and/or copyright holder.