

MASSACHUSETTS SCHOOL OF LAW COPYRIGHT INFRINGEMENT POLICY

Introduction

In compliance with the 18 USC 2319, Criminal Copyright Infringement, 17 USC 101, the No Electronic Theft (“Net”) Act and the Digital Millennium Copyright Act’s provisions relating to educational institutions, encourages its students, faculty and staff to educate themselves on the principles of copyright and to respect the rights of copyright owned by others.

Individuals using computers and networks (the “account holder”), library, and other academic resources are responsible for complying with copyright laws and the Law School’s policies and procedures regarding the use of copyrighted materials.

Copyright Policy

Notification, Investigation, and Removal Procedures

Authority

In the case of copyright infringement by an account holder, the Law School reserves the rights to deny, limit, revoke, or extend computing privileges and access to the network at its discretion or to impose other sanctions at its discretion. (See end of this policy statement for procedures on copyright infringement concerning language, literature, or media other than computers and networks.). Once a determination of copyright infringement has been made under the Procedures for Investigation and Disposition of Copyright Infringement Allegations, the matter will be referred to MSLAW’s Disciplinary Committee.

MSLAW’s Disciplinary Committee, using the regulations governing students as the guideline, will deal with student violations of this policy. Faculty violations of this policy will be dealt with by the Dean or Associate Dean. Staff violations of this policy will be dealt with by the appropriate supervisor or Dean.

The procedures outlined below will apply when the Law School receives written notification of an alleged copyright infringement.

Notification of Infringement by Copyright Holder

Copyright holders who believe an account holder has infringed their copyrighted material must notify the Assistant Dean, or Associate Dean, or Dean (the “designated agent”) of the allegedly infringing action or material in writing. For purposes of these procedures, an Email message from the copyright holder shall be considered a written notice providing the copyright holder alleging the infringement is identified and is willing to provide additional signed documentation of his/her claim. The notification must:

- 1) Identify the copyrighted material being infringed in sufficient detail to permit the Law School to locate the allegedly infringing material on the Law School's network;
- 2) State the basis for the claim of possible infringement;
- 3) State the basis for the copyright holder's copyright in the work (e.g. author, owner, assignee).

Notification of Account Holder of Allegation of Copyright Infringement

The designated agent of the law school will notify the account holder who appears to have posted the allegedly infringing material that an investigation procedure will be conducted according to published policy.

Procedure for Investigation and Disposition of Copyright Infringement Allegations

In the event that the allegedly infringing material is being used for a class at the Law School, the designated agent will attempt to secure an arrangement with the copyright holder for use of the allegedly infringing material by the account holder until the end of the current academic term. Failing a satisfactory arrangement, the designated agent will notify the account holder and conduct an investigation of the alleged infringement and take action as set forth below regarding any allegedly infringing material.

If, after the investigation, the designated agent determines that the allegedly infringing material appears not to infringe on the copyright of the copyright holder, the designated agent will notify the copyright holder and the account holder of this determination. If the copyright holder disagrees with the determination of the designated agent, the copyright holder may request in writing that the Law School ask its attorneys to render an opinion as to whether the allegedly infringing material constitutes copyright infringement. If the material is determined not to constitute copyright infringement, the material will remain on the network.

If, after conducting an investigation, the designated agent determines that the allegedly infringing material appears to infringe the copyright of the holder, the designated agent, working with the appropriate authority, will follow the procedures for removal of infringing material set forth below.

Removal of Infringing Material

If, after the designated agent's investigation, the determination is made that the allegedly infringing material appears to infringe the copyright of the holder, the designated agent will notify the copyright holder and the account holder whose account was used to post the allegedly infringing material. The designated agent will direct the appropriate IT staff member to remove, or block access to, the allegedly infringing material. At this time, the appropriate authority, as designated under "Law School Authority," will be notified.

Upon receipt of notification from the designated agent that the allegedly infringing material appears to infringe the copyright of the copyright holder and is being blocked or removed from the Law School's computers or network, the account holder may request that the designated

agent restore the removed or blocked material based on the account holder's belief that the allegedly infringing material is not infringing. Such a request must be in writing and include a detailed statement of the basis for the account holder's belief that the allegedly infringing material is not infringing, as well as a request that the Office removed or blocked material be restored. If the designated agent receives such a request from the account holder, the designated agent, in consultation with the appropriate Law School authority, will provide a copy of the request to the copyright holder and to the Law School attorney, if the attorney has not already provided an opinion on the matter.

If, within ten days after a copy of the account holder's request is sent to the copyright holder by the designated agent, the designated agent has not received a written request from the copyright holder to continue the blocking or removal of the allegedly infringing material, the designated agent will notify IT department to restore the material so long as the Law School's attorney, if he/she has been consulted, agree that the material does not constitute an infringement of copyright. IT department will restore the allegedly infringing material within four days of the receipt of such notification.

If the designated agent receives, within ten days, a request from the copyright holder to continue the blocking or removal of the allegedly infringing material, the designated agent will provide copies of all correspondence to the Law School's attorney. Notification of this request from the copyright holder will also be sent to the account holder who had appealed the original decision regarding the alleged copyright infringement, and the appropriate Law School authority. The Law School attorneys will be asked to render an opinion as to whether the allegedly infringing material constitutes copyright infringement.

If the allegedly infringing material is determined, by the Law School attorney, not to constitute copyright infringement, the material will be restored by the IT department within four days of such determination.

Procedures Involving Alleged Copyright Infringement Concerning Language, Literature, or media other than Computers and Networks Questions of alleged copyright infringement concerning language, literature, and media other than computers and networks will be investigated by the designated agents established for these areas. These designated agents will follow procedures, and adhere to policies that are essentially the same as those outlined above (for computer and network use) to ascertain if the fair use provisions of copyright legislation have been infringed upon. Blocking or removal of material determined to constitute copyright infringement will be handled in a manner determined to be appropriate for each area, as will restoration of material determined, through the appeal process, to not constitute copyright infringement.

Policy Review

The Copyright Infringement's Committee will ensure that this policy is reviewed every year.

Interim Designation of Agents to Receive Notification of Claimed Infringement

This is to notify copyright holders that the following persons have been designated by the Massachusetts School of Law to serve as designated agents, and to receive requests concerning claimed copyright infringement, pursuant to the Digital Millennium Copyright Act: June 19, 2003

Designated Agent for Possible Infringement of Copyright Concerning Computers and Networks:

Michael L. Coyne

Designated Agent for Possible Infringement of Copyright Concerning Language and Literature: Paula Kaldis

Designated Agent for Possible Infringement of Copyright Concerning Media, Not Including Computers and Networks: Diane M. Sullivan

Any copyright holder wishing to send a notice to the Massachusetts School of Law regarding possible copyright infringement should file that notice in writing with the appropriate designated agent at the following address:

**Massachusetts School of Law
500 Federal Street
Andover, MA 01810**

Sources

The Copyright Office regarding Interim Regulations is available at:

<http://lcweb.loc.gov/copyright/onlinesp/>

The Interim Regulations are available at:

<http://www.aop.org/legis/interim.html>

Circulars from the U.S. Copyright Office:

<http://www.loc.gov/copyright/circs>

University of South Florida-Tampa:

<http://www.lib.usf.edu/acscvc/copyright.html>

(This is a broad collection of sources on copyright)

Skidmore College Guideline:

<http://www.skidmore.edu/help/rules/copyright.html>

Washington and Lee University:

<http://www.wlu.edu/computing/policies.wlu>

Stanford University:

<http://fairuse.stanford.edu>

MSLAW reserves the right to update this policy as needed without notice.

APPENDIX A

What Copyright Is

Copyright is a form of legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. Publication is not essential for copyright protection, nor is the well known symbol of the encircled "c". Section 106 of the Copyright Act (90 Stat 2541) generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

Reproduce copies of the work.

Prepare derivative works based on the copyrighted work.

Distribute copies of the work by sale, rental, lease, or lending.

Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).

Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work -- including the individual images of a film -- or a pantomime).

The copyright owner retains these rights even when the work itself belongs to someone else.

APPENDIX B

Fair Use

The doctrine of fair use, embedded in section 107 of the Copyright Act of 1976, addresses the needs of scholars and students by mitigating the rights of copyright ownership. However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules. To determine fair use, consider the following four factors [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

The purpose and character of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.

The nature of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.

The amount, substantiality, or portion used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.

The effect of the use on the potential market of the copyrighted work. This factor is regarded... as the most critical one in determining fair use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

Permission for Copying in Excess of Fair Use

MSLAW participates in contractual arrangements mandating royalty payments or licensing fees to copyright owners whenever feasible. Nevertheless, it often falls to the individual scholar to obtain written permission from the copyright owner to copy a large portion of a work or an entire work, or to produce multiple copies of chapters or periodical articles. Contact D for help with the permission process.

APPENDIX C

Photocopying in the Library and Elsewhere on Campus

It is permissible to photocopy copyright-protected works in the MSLAW Library and elsewhere on the MSLAW campus without obtaining permission from the copyright owner, under any one of the following circumstances:

Requests for articles and short excerpts -- At the request of a library user or another library on behalf of a library user, the MSLAW Library may allow a user to make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than face-to-face teaching, private study, scholarship, or research. As recommended by Section 108 of the Copyright Act, the library must display the Copyright policy at the place library users make their reproduction requests to the Library.

Replacement of lost, damaged or obsolete copies -- The MSLAW Library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions of copyrighted material must be kept within the confines of the library (that is, available on its computers but not placed on a network accessible by the general, non-MSLAW public) unless copyright permission has been secured.

Requests for entire works -- One reproduction of an entire book or periodical by a user may be allowed in the library at a library user's request, or made by another library on behalf of a MSLAW Library user upon certain conditions being met. These conditions include a determination that, after reasonable investigation, an authorized reproduction cannot be obtained at an acceptable price. Once made, the reproduction must become the property of the MSLAW Library user. The MSLAW Library must have no reason to believe that the reproduction will be used by the user for purposes other than face-to-face teaching, private study, scholarship, or research, and the MSLAW Library must display the register's notice at the location users make their reproduction requests.

Archival reproductions of unpublished works -- Up to three reproductions of any unpublished work may be made for preservation or security, or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the MSLAW Library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the MSLAW Library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.

Photocopying and Scanning By Students, Faculty, and Staff

Students, faculty, and staff members may photocopy or scan materials for face-to-face teaching, private study, scholarship, or research at the MSLAW Library provided the following criteria are met:

- The individual makes one photographic or scanned reproduction of an article from a periodical or a small portion of any other work;
- The reproduction becomes the property of the individual;
- The reproduction will not be used for purposes other than face-to-face teaching, private study, scholarship, or research; and,
- The Library displays the copyright policy at the location where the individual makes his/her reproductions.

Photocopying and scanning by students, faculty, and staff is subject to a fair use analysis as well. A single reproduction of a portion of a copyright-protected work, such as a copy or scanned reproduction of a journal article may be made without permission. Photocopying or scanning all the assignments from a book recommended for purchase by the instructor, making multiple reproductions of articles or book chapters for distribution to classmates, or reproducing material from consumable workbooks, all require permission.

In addition, a scanned copy may not be distributed via email (including attachments), posted on a web site, or in any other way distributed beyond use for face-to-face teaching, private study, scholarship, or research.

APPENDIX D

GUIDELINES FOR USING MULTIMEDIA AND THE INTERNET

Multimedia refers to the use of more than one of the categories of work protected by copyright law, such as a PowerPoint file with images, video clips, or a sound recording with images. As part of the Conference on Fair Use (“CONFU”) process, [Educational Multimedia Fair Use Guidelines](#) were produced in 1996. These guidelines apply to use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects created by educators or students for course-related work. Key elements of the guidelines are summarized below.

Time

Instructors may use their multimedia projects for a period of up to two years after first instructional use. Usage beyond that requires the period requires permission for each copyrighted portion of the work from the copyright holder.

Portion

Motion Media

Faculty and students may use up to 10% or three minutes of a source, whichever is less, of a single copyrighted motion media work.

Text

Faculty and students may include up to 10% or 1000 words of a source, whichever is less, of a single copyrighted work. For example, an entire poem of less than 250 words, but no more than three poems by one poet, or five poems by different poets from any single anthology may be used. In poems of greater length, faculty or students may include up to 250 words, but no more than three excerpts by a single poet, or five excerpts by different poets from a single anthology.

Music, Lyrics, and Music Video

Faculty and students may use up to 10% but not more than 30 seconds of music and lyrics from a single musical work. Alterations to a musical work should not change the basic melody or the fundamental character of the work.

Illustrations, Photographs

Faculty and students may use a photograph or illustration in its entirety; however, no more than five images by one artist or photographer may be included. In addition, no more than 10% or 15 images, whichever is less, may be used from any single published work.

Numerical Data Sets

Faculty and students may include up to 10% or 2500 fields or cell entries, whichever is less, from a database or data table. A field entry is a specific item of information in a record of a database file. A cell entry is the intersection where a row and a column meet on a spreadsheet.

Instructor-Authored Materials

Faculty may post online any materials they create, such as lecture notes, tests, exercises, problem sets, and PowerPoint presentations. Instructors should note that if material they authored has been published (e.g., in a journal), they may have transferred the copyright to the publisher. In that case, it may be necessary to obtain permission from the publisher to post the material.

PowerPoint Presentations

Presentations that include images/pictures, video, music, or other multimedia must be copyright compliant. Use the guidelines in this section to inform decisions based on the content of the PowerPoint presentation (i.e., “Images,” “Audio Recordings,” “Video,” “Data Sets”).

Copying Sound Recordings

Non-Music Recordings

Audio cassettes or CDs may not be copied unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts may be permissible under the Fair Use doctrine.

Other Issues

Other issues related to the copying of music include recording copyrighted works in any format (e.g., phonograph records, cassettes, audio CDs, MP3s), preparing derivative works, distributing copyrighted music, and performing musical works. In general, it is not an infringement if:

- The playback or performance is done in face-to-face teaching;
- The playback or performance of the work is on closed-circuit television to other classrooms or to students with disabilities for teaching purposes only; and
- There is no direct or indirect commercial advantage, including no fees paid to performers and no admission charge.

APPENDIX E

FREQUENT ASKED QUESTIONS

Printed Materials

Works that May be Used Freely

Occasionally, scholarly publications such as journal articles include a note offering the right to copy for educational purposes.

Some categories of publications are in the public domain; that is, their use is not protected by copyright law:

Publications dated 1922 or earlier.

Works that do not include a copyright notice and were first published before January 1, 1978.

Most United States government documents.

Once a work has acquired public domain status it is no longer eligible for copyright protection.

Photocopying

Printed Materials Other Than Music: What Quantity Conforms to the Law?

The following parameters are widely considered to be inappropriately restrictive for academic needs. However, they define the limits within which we can be sure of complying with copyright law. Somewhat more extensive copying may be sanctioned by the fair use guidelines.

Single Copies for Scholarly Needs or Library Reserve

One chapter from a book.

One article from a journal issue or newspaper.

Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10% or less of the total length of the book or journal issue.

A short story, short essay, or short poem.

A chart, diagram, drawing, graph, cartoon, or picture.

*Articles, etc. that are submitted for Reserve are considered the property of the instructor and will be returned at term-end at professor's request. (See "Library Reserve Services", for further information.)

Multiple Copies for Classroom Use

must meet the following tests of brevity, spontaneity, and cumulative effect. Each copy must also include prominent notice that it is copyrighted material.

Brevity

Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) 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 an excerpt of up to 500 words.

Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words.

(Each of the numerical limits above may be expanded to permit the completion of an unfinished prose paragraph or line of a poem.)

Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

Special Works: Certain works in poetry or prose or in "poetic prose", which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

Spontaneity

The copying is at the instance and inspiration of the individual instructor.

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 copying of the material is for only one course, with no more than one copy per student in the course.

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 a term.

There shall not be more than nine instances of such multiple copying for one course during a term.

Course Packets

Copyright litigation involving academic users has focused on these "anthologies", which are perceived as substituting for textbooks and thus as reducing the potential market for copyrighted publications. Every article or chapter in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner (usually the publisher) or through a royalty

fee paid to the Copyright Clearance Center. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 1990 by Academic Books, Inc." Individuals who purchase course packets should not be charged in excess of cost.

Photocopies Obtained Through Interlibrary Loan

Section 108(d) of the Copyright Law of 1976 specifies that a library may copy "no more than one article or other contribution to a copyrighted collection or periodical issue, or to . . . a small part of any other copyrighted work." The copy must become the property of the requestor, and its use is limited to "private study, scholarship, or research."

Interlibrary Loan activities are further restricted in the aggregate by the "CONTU Guidelines", which cap the amount of photocopying the ILL office can request for MSLAW community in any calendar year. The thrust of the "Guidelines" is to quantify the maximum number of photocopied articles -- five -- that can be requested from the most recent five years of a periodical the library does not subscribe to. The "CONTU Guidelines" are available in the Interlibrary Loan office. Individuals requesting copies in excess of the CONTU allowance may be asked to pay a royalty or the fee necessary to obtain such copies commercially.

The Interlibrary Loan office is legally obligated to display prominently the following notice and to include the same text on all request forms:

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.

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

Photocopy Machines

Every photocopy machine on campus must include effective signage incorporating the following text:

Notice: The copyright law of the United States (Title 17 U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

How many photocopies of an item may be placed on reserve?

MSLAW College Library reserve services routinely accept single photocopies of copyright-protected chapters, articles, etc. [see p. 3, "Single Copies for Scholarly Use or Library Reserve"]. The photocopies are considered to be the instructor's property. Although copyright law prohibits libraries from systematic copying to enhance their collections, an instructor may provide duplicate photocopies (three at most) when a course is large enough to require more than one of an assigned photocopy. If an original is not owned by the Library or the instructor, the instructor must provide written permission or indication of royalty payment for photocopies in excess of one.

How many photocopied items are permitted on reserve for a course?

A) How many items from one source? MSLAW Copyright Policy dictates that we can accept 1 chapter from a book or 1 article from a journal issue for Course Reserves. Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10.0% or less of the total length of the book or journal issue.

B) How many items altogether? There are several relevant considerations, including the four factors which determine fair use; the "Guidelines for Multiple Copies for Classroom Use"; and recent judicial history. Still, the quantitative threshold for exceeding fair use is problematic. However, current opinion on academic applications of the copyright law is consistent in regarding course packets derived from copyright-protected materials as outside the bounds of fair use. Consequently, course packets will not be accepted for library reserve without indication of the necessary permission or royalty payment.

Copies on Reserve must be marked: NOTICE: This material may be protected by copyright law (Title 17 U.S. Code)

Special restrictions apply to music Reserves. See sections on sound recordings and photocopying music.

Common Questions:

Can a whole book be photocopied when there seems to be no way to buy another copy?

Yes, so long as a vigorous marketplace search determines that another copy cannot be bought at a reasonable price, within a reasonable period. A reasonable investigation will always require recourse to commonly known trade sources in the United States and, if that fails, an attempt to obtain the copyright owner's permission.

Are there any concise, authoritative resources that can help determine when a particular publication might be free of copyright protection?

The United States Copyright Office issues a series of Copyright Circulars on many aspects of copyright, including duration and protection of foreign publications.. Many Copyright Circulars are also available from the World Wide Web.

Unpublished Works

Manuscripts, letters and other unpublished materials are likely to be protected by copyright regardless of age, even if they lack a notice of copyright. Consult MSLAW Library Director.

Unpublished works that belong to the Library or College Archives may be reproduced in facsimile format for preservation purposes or for deposit for research use in another library or archives. Copies may usually be made for individual researchers under the law's Fair Use provisions.

Audiovisual Materials

Films and Video

Classroom Use

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be "performed". For example, videocassettes from a video rental outlet usually bear a label that specifies "Home Use Only". However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

Section 110 (1) of the Copyright Act of 1976 specifies that the following is permitted:

Performance or display of a work by instructors or pupils in the course of face-to- face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made...and that the person responsible for the performance knew or had reason to believe was not lawfully made.

Additional text of the Copyright Act and portions of the House Report (94-1476) combine to provide the following, more detailed list of conditions [from Virginia M. Helms, supra]:

1. They must be shown as part of the instructional program.
2. They must be shown by students, instructors, or guest lecturers.
3. They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
4. They must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
5. They must be shown only to students and educators.
6. They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a "face-to-face" classroom setting, may not be used for entertainment or recreation, whatever the work's intellectual content.

Copying Videotapes / Off-Air Recording of Broadcasts, Including Satellite TV

Copying videotapes without the copyright owner's permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price [Section 108 of the Copyright Act of 1976].

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, "Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes", an official part of the Copyright Act's legislative history, applies to most off-air recording [from Virginia M. Helms, *supra*]:

1. Videotaped recordings may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. Videotaped recordings may be shown to students only within the first 10 school days of the 45-day retention period.
3. Off-air recordings must be made only at the request of an individual instructor for instructional purposes, not by staff in anticipation of later requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
6. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.
7. The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Certain public broadcasting services (Public Broadcasting Service, Public Television Library, Great Plains National Instructional Television Library, and Agency for Instructional Television) impose similar restrictions but limit use to only the seven-day period following local broadcast [Virginia M. Helms, *supra*].

Network Distribution of Video

MSLAW negotiates for closed-circuit distribution rights, if possible, when purchasing access to

satellite broadcasts or obtaining works on videotape. Without explicit permission for closed-circuit distribution, network transmission of a video is not permissible unless "Classroom Use" structures are met.

Common Questions:

May I purchase or rent a film from the local video store and use it in my class?

Tapes from a video store are labeled "Home Use Only", indicating a licensing agreement with the copyright holder. Nevertheless, use of such tapes is considered "fair use" in a face-to-face teaching situation. Tapes marked "Home Use Only" may also be placed on reserve and viewed in the Video Lab if they are used strictly for instructional purposes and not entertainment.

Is it permissible to make a copy of a rental video in order to use it again, later?

No. That would infringe on the rights licensed to the rental agency. (Absent reasonable return for service, rental agencies cannot survive.)

Can an auditorium or other large space be used to show a video labeled "Home Use Only" to a class?

Yes, so long as the performance is not open to the public and is for an instructional purpose within the structure of the course. Use for entertainment is prohibited.

If my department already owns a videotape, and it has been used in the classroom, can I have it shown on the campus video network?

Not unless explicit permission for closed-circuit distribution has been obtained.

How does the "face-to-face" instruction requirement affect the practice of putting video tapes on Reserve and assigning them to students?

When purchasing video tapes, MSLAW College seeks permission to allow this type of use. A label affixed to the cassette will specify when such permission has been granted.

Can a college-owned video be copied for Reserves?

Not unless permission for the copying has been obtained from the copyright owner.

May a club or other group show a video obtained from a local video store?

No. However, many film/video libraries and distributors offer the required "public performance rights" that are included in a higher rental fee.

What if a student rents a video from a video store and views it with a few friends in her dormitory

living room?

Experts disagree! But since access to dormitories is limited to acquaintances of students, this would seem to be comparable to "home use".

I don't have time to preview this video right now, and it's due to be returned to the vendor. Can Audiovisual Services copy it for me?

No; preview videos may not be copied. But in an emergency Audiovisual Services can ask the vendor for an extended preview period.

Can a video tape be made of a film that is out of print and deteriorating rapidly?

Although the film is out of print, permission of the copyright owner is nonetheless required.

Slides and Photographs

Reproduction

Whenever possible, MSLAW will either purchase slides and photographs from authorized sources or will borrow from institutions which offer licensing for single-copy reproduction. In either case, further copying would be prohibited.

Occasionally, slides of copyrighted images that are needed for classroom purposes cannot be obtained ready-made in a timely fashion. If the process of slide-making would fail to meet Fair Use requirements, the requestor must demonstrate that the copyright owner has granted permission.

Display

Copyright ownership of slides and photographs encompasses control over display as well as reproduction. However, Section 110 of the Copyright Act of 1976 addresses the display of copyrighted slides and photographs in educational settings by allowing "display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction" so long as the copy of the artwork was lawfully made. Furthermore, the purpose of the display must be integral to the course.

Educational Multimedia Fair Use

Key elements of the Educational Multimedia Fair Use Guidelines are summarized here. The Guidelines specify how much of copyright-protected sources may be included in multimedia products prepared by students or faculty members for course-related work. Use of larger portions requires permission from copyright owners. Creators of multimedia products may prepare a total

of three copies, one of which is for preservation and replacement purposes only. One of the copies may be placed on Library Reserve. An exception is allowed for joint projects: each principal creator may retain a copy. Fair Use status expires two years after the first instructional use of a particular multimedia product.

How Much

Motion Media

Up to 10% or 3 minutes of a source, whichever is less.

Text

Up to 10% or 1000 words of a source, whichever is less. An entire poem of less than 250 words, but no more than 3 poems or excerpts by one poet. No more than 5 poems or excerpts from one anthology.

Music, Lyrics, Music Video

Up to 10% but not more than 30 seconds total from an individual work.

Illustrations, Photographs

No more than 5 images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.

Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less.

Internet Sources

Though it can be difficult to determine what is copyright protected and what is in the public domain, the multimedia creator is responsible for adhering to copyright law.

Opening Screen Notice

"Certain materials are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use." Credit the sources and display the copyright notice and copyright ownership information if shown in the original source. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright notice includes the word "Copyright" or the copyright symbol, the name of the copyright holder, and the year of first publication.

Integrity of Sources

Any alterations of copyrighted items must be noted.

Computer Software

Software products that are not licensed to MSLAW may also be used. However, copying is strictly limited except for backup purposes. Whether the software is transferred from the original to a hard disk or to an archival diskette, the backup copy is not to be used at all so long as the other copy is functional.

For a brief overview go to the following site

<http://www.loc.gov/teachers/copyrightmystery/>

For more information on the laws of copyright it is suggested you go to the following site:

<http://www.copyright.gov/laws/>

For a more comprehensive overview go to this site:

<http://www.copyright.gov/>

WHEN IN DOUBT CONTACT THE NAMED PEOPLE IN THIS POLICY WITH YOUR QUESTIONS. IGNORANCE IS NOT A DEFENSE!