University of Wisconsin Colleges
Administrative Policy #53
COPYRIGHT POLICY

Implemented: 1/31/2011

Reviewed and approved by:
  Chancellor’s Executive Team  1/31/2011
  UW Colleges Copyright Committee  12/10/2010
  UW System Deputy General Counsel Christopher L. Ashley  10/5/2010

1. Statement of Values

The University of Wisconsin Colleges recognizes and respects intellectual property rights. As part of our mission to maintain the highest standards for ethical conduct, we are committed to fulfilling our legal obligations with respect to the use and ownership of copyright-protected works. We are equally committed to preserving fair use of copyright-protected works, balancing the interests of ownership and access.

2. Background Information on U.S. Copyright Law

The Original Law

Article I of the U.S. Constitution authorizes Congress to pass legislation “to promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” On the basis of the Constitution, Congress enacted the U.S. Copyright Act (17 U.S.C. 101 et seq.), which grants the owner of a copyrighted work the exclusive rights to

- Reproduce or copy the work
- Prepare derivative works based on the original work
- Distribute copies of the work for sale, rental or lease
- Perform or display the work publicly
- Perform sound recordings via a digital audio transmission

Copyright laws in the U.S. protect works even if they are not registered with the U.S. Copyright Office and even if they do not carry the copyright symbol (©). Copyrighted works may be in print, video, electronic or digital form and include, but are not limited to, books, magazines, newspapers, cartoons, trade journals, training materials, newsletters, printed articles from
publications, TV and radio programs, videotapes, compact discs, DVD’s, music performances, photographs, training materials, manuals, documentation, software programs, databases and World Wide Web pages. To be eligible for copyright protection, a work must be original and fixed in any tangible medium, including electronic and digital, and be one of the following eight categories of works (17 U.S.C 106):

- Literary works, including computer software
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

3. Use of Others’ Copyrighted Works

Use of copyrighted works owned by others must be either with permission of the owner, or within the scope of a recognized exception to the permission requirement.

Permission

The copyright owner can grant permission directly or through a representative. Collective rights organizations clear permissions for certain works and uses. Faculty, staff and students must obtain permission from copyright holders directly, or their licensing representative, if the use does not fit within a recognized exception to the copyright owner’s exclusive rights. An appendix to the UW System Policy on Ownership of Copyrightable Instructional Materials (GAPP 27) includes a sample requesting permission to use copyrighted materials. Alternatively, permission may be obtained from centralized clearinghouses for the use of various kinds of works. The following organizations are examples of collective rights organizations:

- Copyright Clearance Center (photocopies and electronic copies of books and journals) – e.g., for course-packs

- ASCAP, BMI, and SESAC (music) – e.g., for university musical programs

- Motion Picture Licensing Corporation (movies) – e.g., for public performances of recorded movies for entertainment purposes
Exceptions to the Permission Requirement

The Library Exemption (Copyright Act Section 108) allows creation of archival copies, copies to patrons, unsupervised copying, interlibrary loans. The face-to-face teaching exception allows teachers to show or perform any work related to the curriculum, face-to-face in the classroom.

The TEACH Act allows “reasonable and limited portions” of a work to be shown in distance education activities, but a number of other restrictions apply including limiting distribution to students in class and technological controls on storage and dissemination.

Fair Use

In using works of others for educational purposes, the most commonly relied upon exception is "fair use." The fair use exception (17 U.S.C. 107) is a four-factor test that balances the rights of copyright owners in their creations against the public interest in the free exchange of ideas. The four factors are:

1. **The character of the use.** For example, nonprofit, personal or educational use are generally factors in favor of fair use, particularly if the use is for such things as criticism, commentary, news reporting, parody, or some other "transformative" use. However, any commercial use would usually favor requiring permission from the copyright owner.

2. **The nature of the work to be used.** Facts and published works tend to again weigh in favor of fair use. Imaginative and unpublished works are more likely to require permission to use.

3. **How much of the work is used.** This factor also requires some judgment. For example, a nonprofit educational institution copying of an entire article from a journal for students in a class would lean towards fair use; but a commercial copy shop would tip the balance towards obtaining permission for the same copying. Similarly, commercial publishers often have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier quotes.

4. **The effect of the use on the market for the work.** This really asks the question: "If the use was widespread, and the use was not fair, would the copyright owner be losing money?" In essence, could the use avoid the payment of royalties in an established permissions market?

Use of a copyrighted work need not satisfy all four factors to qualify as fair use; rather, the factors favoring fair use must outweigh the factors favoring obtaining permission.
4. Ownership of Employee-Created Instructional Materials

Under the UW System Policy on Ownership of Copyrightable Instructional Materials, http://www.uwsa.edu/fadmin/gapp/gapp27.htm (GAPP 27), the faculty member usually owns all rights in his or her scholarly works such as articles, books, and course materials. For instance, a professor who creates a scholarly article in the course of research at a UW System institution, would ordinarily own the copyright in it. The institution may have an interest, however, if it contributed substantial institutional resources in the creation of the work. "Substantial" resources could include providing the creator with paid release time from his or her job, or allowing the employee exceptional access to specialized computer resources to create the work. In practice, when an author uses institutional resources to create a protected work, it is best to agree with the institution beforehand about ownership and control of the work. GAPP 27 includes a sample agreement to allocate rights and interests in copyrighted works between the institution and the employee author.

Materials produced by staff as an assigned duty of employment are considered work for hire and all rights and copyrights to these materials belong to the University of Wisconsin Colleges.

5. University Obligations Regarding Copyright

The University of Wisconsin Colleges sets forth these procedures for all faculty, staff and students to demonstrate our respect for intellectual property and commitment to proper fair use:

- The use of copyrighted work either must have the permission of the copyright owner, either directly or through a representative or meet the fair use exception or another recognized exception to the exclusive rights of the copyright owner.

- The University of Wisconsin Colleges Copyright Advisory Committee is designated as the copyright officer to administer the campus copyright procedures. The UW Colleges Copyright Advisory Committee can help handle any special copyright issues, including questions regarding fair use.

- Faculty, staff and students are encouraged to educate their peers on copyright compliance and fair use. Faculty, staff or students who illegally duplicate copyrighted works may be subject to disciplinary, criminal and/or civil action.