

USE OF COPYRIGHTED MATERIAL

I. POLICY

It is the policy of Wake Forest University School of Medicine that faculty, staff and students must comply with the laws and regulations pertaining to copyright. Ordinarily copying printed materials without the permission of the copyright owner is a violation of the exclusive rights of the copyright owner, unless such copying falls under the limited exception for fair use. The Copyright Act provides for the award of damages and attorney's fees for unauthorized copying; willful infringers are subject to fines of up to \$100,000 for each work copied. The School is not required to defend an individual who ignores or knowingly fails to comply with the laws pertaining to copyright. Permission to use copyrighted graphic art, illustrations, photography, video, audio, music, text, software, and multimedia must be secured before they are incorporated into instructional materials, unless such copying falls under the limited exception for fair use.

Guidance on the doctrine of fair use and on reproduction of various materials is set out below. You may also consult:

- A. "Fair Use Guidelines for Educational media" developed by the Consortium of College and University Media Centers at <http://www.indiana.edu/~ccumc/copyright/copyright.html>.
- B. The Copy Clearance Center at <http://www.copyright.com>
- C. U.S. Copyright Office at <http://lcweb.loc.gov/copyright/> or
- D. Contact Biomedical Communications – Copyright Release (336) 716-9405, or the Coy Carpenter Library (336) 716-4378.

II. COPYRIGHT BASICS

Copyright law provides the authors of original works the exclusive right, for a limited period of time, to authorize:

- A. Reproduction of their work;
- B. Preparation of derivative works;
- C. Distribution of copies by sale or other transfers of ownership;
and
- D. Performance or display of the copyrighted work publicly as literary, musical, dramatic, choreographed works, pantomimes, motion pictures, audiovisual works, or works of art.

Copyright may be claimed not only in the printed word, such as books, articles, bibliographies, manuscripts, study guides, tests, laboratory materials, and tests, but also in creations such as musical works, dramatic and choreographic works, photographs, slides, drawings, graphic art, motion pictures, sound recordings, multimedia and digitized works, and other audio visual works. Combinations of data, text, still images, animation, video, and audio also constitute multimedia.

With the advent of the electronic age, copyright also becomes important with respect to distance learning or instructional programs or materials to be located on the institutional internet or intranet web site, CD-ROM, electronic course packs, and software.

The Copyright Act contains two exceptions, which permit limited copying and distribution: 17 U.S.C. 108 pertaining to libraries; and 17 U.S.C. 107 pertaining to fair use.

III. FAIR USE

Fair use provides for limited copying and distribution of copyrighted materials without permission. The uses, as covered by fair use, are for criticism, comment, news reporting, or teaching.

Fair use applies to printed graphic, sound, and multimedia materials.

The law sets forth four (4) factors that must be applied to determine whether copying or distribution falls within the limited exception for fair use. Depending on the circumstances some factors are given more weight than others.

- A. The purpose and character of the use.
Fair use applies to portions of copyrighted materials that are duplicated and distributed for specific educational purposes, particularly if the copies are made spontaneously, for temporary use, and not as an anthology.
- B. The nature of the copyrighted work.
Copying factual works and published works are more likely to be considered fair use than copying a work of fiction or an unpublished work.
- C. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
Fair Use allows for the use of segments of a copyrighted work rather than the work in its entirety.
- D. The effect of use on the potential market for or value of the work.
Fair use is more likely to be found when the copies do not reduce the sale of the work or are not used for commercial purposes.

IV. GUIDELINES FOR THE INSTRUCTIONAL USE OF COPYRIGHTED MATERIALS

- A. Copying
Following the Fair Use guidelines set forth above, portions of copyrighted printed, electronic, or multimedia materials may be captured, digitized, manipulated, or transferred to an alternative medium for educational purposes only.
- B. Acknowledgement
Each segment or page should clearly and prominently acknowledge the holder of the copyright.
- C. Incorporation of digitized materials into new works
Digitized materials may be incorporated into new works for instruction only. If the new works are used beyond the scope of the original instructional use or have commercial use, permission to use the materials must be obtained from the holder of the copyright.
- D. Digitized collections
 - 1. Collections of digitized images or multimedia designed for instructional use are limited by the doctrine of fair use directly to instruction or research.
 - 2. If such collections are to be a permanent resource or widely used by faculty and students, permission for use must be obtained from the copyright holder.
- E. Network access to digitized materials.
 - 1. Network access via the Internet to WFUSM created digitized study collections that include copyrighted material is restricted to the campus network.
 - 2. These collections must be for temporary instructional purposes only and must be removed at the end of the academic term for which they are intended.

3. Notice must be prominently displayed indicating that materials may not be downloaded, printed, or modified except for temporary instructional purposes as specified by the doctrine of fair use.
- F. Personal and course Web pages.
1. Creators of Web pages must adhere to the rights of copyright holders.
 2. Fair use exemptions only apply when Web pages are exclusively used for educational purposes.
- G. Retaining and distributing commercial "off air" materials.
1. "Off Air" recordings of commercial material for instructional use may be used for 10 calendar days after the recording was made.
 2. The material may be kept by the faculty member for 45 calendar days after the original broadcast, for research only, and then erased.
- H. Use of copyrighted materials in multimedia instruction. Educators may incorporate portions of lawfully acquired copyrighted works when producing educational multimedia programs for their own teaching use.
1. Place a notice on the opening screen of the multimedia program and any accompanying print material that, "certain materials are included under fair use exemption of the U.S. Copyright Law...and are restricted from further use."
 2. Credit all sources on each screen or on a credits screen.
 3. Use the multimedia projects only for educational (not commercial) purposes.
 4. Destroy projects within two years of first use, except for a copy for personal use.
 5. Use of educational copyrighted materials in multimedia projects are subject to additional restrictions as to how great a portion of a copyrighted work may be copied, and the number of copies an educator may distribute and make of the multimedia project.

If you have ANY questions as to the appropriateness of any instructional materials to be copied, contact Biomedical Communications—Copyright Release (337) 716-9405, or the Coy Carpenter Library (336) 716-4378.

V. USE OF COURSEPACKS

- A. Coursepacks are collections of printed or electronically copied materials used for a specific course of instruction.
- B. As a general rule, faculty members creating coursepacks should obtain permission from the copyright holder before using copyrighted materials in coursepacks. Biomedical Communications can provide assistance in obtaining permission.

VI. GUIDELINES FOR THE USE OF VIDEO AND OTHER MEDIA

- A. Copyright law provides the author or owner of an original work with the exclusive right to perform or display the copyrighted work publicly, as in literary, musical, dramatic, or choreographic works, pantomimes, motion pictures, and other audiovisual works, or works of art. "Publicly" is defined as

performing or displaying the copyrighted work in a place open to the public or at any place where a substantial number of persons are gathered.

- B. Public performance rights purchased from the distributor of the work are required for all public showings.
- C. Face-To-Face Instruction: 17 U.S.C. 110 (1) of the copyright law provides an exception to the copyright holder's exclusive right to performance.
- D. "Face-To-Face" exemptions allow performance of a work, including home use video, in class as long as the following criteria are met:
 - 1. Applies only to non-profit educational institutions;
 - 2. Applies only to instructional activities in the classroom where the teacher and students are in the same location;
 - 3. Covers performances of copyrighted works by teachers, students, and guest lecturers;
 - 4. The audience must be composed of members of one class only;
 - 5. The performance must be part of a "systematic instruction" which does not include recreational or cultural programs;
 - 6. The performance must take place in a classroom or similar place devoted to instruction, (i.e., not a gymnasium, auditorium, class play, graduation, athletic event, etc.); and
 - 7. Must use a lawfully made copy of the film or video. When a professor has taken parts of copyrighted materials to make the copy, whether or not the copy was lawfully made depends upon an analysis of the four "fair use" factors. The face-to-face exemption itself does not authorize any copying.
- E. Satellite/Closed Circuit Reception and Transmission Licenses (Distance Education)
 - 1. Broadcast and cable rights are not covered in the fair use doctrine or the face-to-face instructional exemption.
 - 2. A separate contract must be negotiated for these rights. This requirement applies to interactive television.
 - 3. Permission from the copyright holder/owner of videocassettes for distance learning purposes must be obtained.

VII. GUIDELINES FOR THE USE OF COMPUTER SOFTWARE

- A. Copying, distribution, or use of computer software that in violation of software contract provisions or copyright law is prohibited.
- B. "Copying" not only entails duplicating floppy disks, but also takes place when a program is transferred from a floppy onto a hard disk, sent over a local area network, or telecommunicated over long distance lines.
- C. The following prohibitions and areas of caution are to be observed by all faculty, students, and staff:

1. Use of software may be restricted. For example:
 - a. Use of software may be restricted to a particular computer at a particular site; and
 - b. Permission of the copyright owner must be obtained in order to use the software on a different computer at a different site.
2. Individual employees who acquire software for their personal use in the course of their duties at the Wake Forest University School of Medicine must obtain any necessary licenses.
 - a. If the software is purchased by the School of Medicine, any licenses will be in the name of the institution.
 - b. Employees may not make copies of software for associates, but may transfer their use to a colleague. In doing so, the original user loses the right to continued use of the software and may not retain any copy of it.
3. If the University supplies licensed software to students in the course of instruction in a classroom, sufficient licenses must be held by the University for all computers in that classroom.
4. If the University supplies licensed software to students in the course of instruction in other than a classroom situation, sufficient licenses must be held by the University for all students in the class and for the instructor.
5. If more than one class is using licensed software during the same quarter, the University must hold sufficient licenses for all such classes.
6. Shareware is easily identifiable:
 - a. Through explicit statements within the software documentation; or
 - b. Through identification displayed on the computer screen;
 - c. Unless these explicit statements identify the software as shareware, the user should assume that it may NOT be duplicated.
7. Software not containing a copyright notice is not necessarily in the public domain and the user should consult with the manufacturer to ensure that such software may be freely copied.