

Copyright Policy For Union-PSCE¹

It is the intent of Union-PSCE that all members of the Seminary community adhere to the provisions of the United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.). The following policy statements and guidelines constitute a manual for anyone at the Seminary who wishes to reproduce, alter, or perform works that are protected by copyright. Since copyright protection applies to a variety of creative works -- printed materials, sound recordings, video recordings, visual artworks, computer software, and others -- the manual has been constructed to address issues related to particular types of media.

Members of the Seminary community who willfully disregard the copyright policy do so at their own risk and assume all liability.

I. What Is Copyright?

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:

1. **Reproduce** copies of the work.
2. **Prepare derivative works** based on the copyrighted work.
3. **Distribute** copies of the work by sale, rental, lease, or lending.
4. **Publicly perform** the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).
5. **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. However, the rights are not absolute. They are subject to both "Fair Use" limitations, which apply to all media, and medium-specific limitations.

II. 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

¹ This policy borrows heavily from the wise policies for copyright formulated by Wellesley College and the Indiana University Bloomington Libraries.

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]:

A. Criteria for Fair Use

1. 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.
2. 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.
3. 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.
4. 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.

B. Permission for Copying in Excess of Fair Use

The Seminary 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.

III. Printed Materials

A. 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:

1. Publications dated 1922 or earlier.
2. Works that do not include a copyright notice and were first published before January 1, 1978.
3. Most United States government documents.

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

B. Photocopying

1. 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.*

i) Single Copies for Scholarly Needs or Library Reserve

1. One chapter from a book.
2. One article from a journal issue or newspaper.
3. 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.
4. A short story, short essay, or short poem.
5. 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. (See "Library Reserve Services", for further information.)

ii) 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.

2. 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 checking with the Copyright Clearance Center to see if the Seminary is covered, and if not, paying a royalty fee through 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. Expect several weeks' delay in cases where copyright owners are elusive.

3. Photocopying Music for Educational Purposes

i) What Quantity Conforms to the Law?

For a Performance - Emergency copying is permitted so long as replacement copies are subsequently purchased.

Single Copies for Personal or Library Reserve Use (Academic Purposes Other Than Performance) - An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

Multiple Copies for Classroom (Non-Performance) Use - Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.

Packets of Photocopied Music Excerpts
See section above, "Course Packets ".

4. 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 the Seminary 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.

5. 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.

IV. 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 with the Seminary Archivist.

Unpublished works that belong to the Library or Seminary 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.

V. Reserves

A. Paper Reserves in the Library

Since library reserve services function as classroom adjuncts, the guidelines for "Multiple Copies for Classroom Use" [pp. 3-4] are relevant. However, these guidelines address the practice of distributing photocopies to every course participant. Furthermore, the quantities specified for amount of text and total instances of photocopying constitute the minimum permitted by copyright law. Consequently, many academic reserve services adopt policies that seek to blend the spirit of the guidelines for "Multiple Copies..." with the criteria for fair use.

- 1. Copies on Reserve must be marked:** NOTICE: This material may be protected by copyright law (Title 17 U.S. Code)
- 2. Special restrictions apply to music Reserves.** See sections on sound recordings and photocopying music.
- 3. Common Questions on Paper Reserves**

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

Union-PSCE's 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?***

- **How many items from one source?** Union-PSCE's 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.

▪ ***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. Individual Circulars are frequently

revised. Many [Copyright Circulars](#) are also available from the World Wide Web.

- **What if I discover the need to copy more than would be permitted as "fair use" when there is insufficient time to obtain permission?**

In a genuine emergency, Seminary departments such as the Central Services might proceed before written permission is received. However, the Seminary's credibility in upholding the letter and spirit of the copyright law does not allow for many such exceptions. Further, if permission is subsequently denied, the disallowed copies would have to be withdrawn.

B. E-reserves on BlackBoard

Union-PSCE maintains course reserve collections, in both print and electronic formats, to support the instructional requirements of specific courses.

The following policies apply to materials that are scanned or downloaded to the Seminary's electronic reserve service on BlackBoard. These policies do not apply to materials that are openly posted on the World Wide Web for which direct links are included in the electronic reserve service; to materials for which no copyright protection is claimed; or to copyrighted materials that have passed into the public domain.

- ❖ Faculty submitting materials for electronic reserves must submit a completed [Fair Use Checklist](#) (See Appendix A) for the materials that will be added to Blackboard. This must be done whether IT posts the material online for the faculty member, or whether the faculty member scans and post the material. IT has the right to refuse a submission for publication without this form, or if there is some concern about whether the use constitutes fair use.
- ❖ Written permission from the copyright holder *that has been obtained by the professor requesting the inclusion of materials into electronic reserves* will be required for inclusions that exceed what is determined by Information Technology personnel to be fair use.
- ❖ All use of materials placed on electronic reserves will be at the initiative of instructors solely for non-commercial, educational use by students.
- ❖ There will be no charge for access to the electronic reserve service; the charge for copies made by students will be limited to the nominal cost of photocopies or laser prints.
- ❖ Each item included in the electronic reserves will carry a cover page with notice that the copying of materials may be subject to copyright law.
- ❖ Access to reserve materials will be limited to students registered in the course for which the materials have been placed on reserve, to instructors, and to staff responsible for the electronic reserve service.

- ❖ The Information Technology department will continually monitor legal developments which may affect the fair use analysis of electronic reserve services to ensure that library services are in compliance with the letter and spirit of the United States copyright law.

1. Responsibilities for the use of copyrighted materials on E-reserves

i) Instructor Responsibilities

- All materials submitted by instructors must support course-related teaching, scholarship, or research.
- Instructors submitting materials are responsible for evaluating, on a case-by-case basis, whether the use of a copyrighted work requires permission or qualifies as a fair use. Instructors are to use the [Fair Use Checklist](#) (See Appendix A) as a guide to this determination and submit a completed Fair Use Checklist for each item to be placed on e-reserves by IT and on paper reserves by the Library.
- When permissions are needed, the instructor will obtain permission first by checking the Copyright Clearance Center's coverage and, if not covered there, by contacting the copyright holder. Instructors are responsible for providing print outs of either the webpage indicating coverage by the Copyright Clearance Center or the webpage from the Copyright Clearance Center's website indicating a payment is in process for copyright permission.
- Whenever copying original materials is involved, whether the copies are made by instructors or by the libraries, only the amount needed to accomplish the specific educational purpose should be copied.

ii) User Responsibilities

- All materials placed on course reserves are to be used solely for non-commercial educational purposes in connection with designated courses.
- Copyrighted materials made available through course reserves are to be used for teaching, scholarly, or research purposes, and should not be reproduced for further distribution.

iii) Information Technology & Library Responsibilities

- The Information Technology department and the Library will provide information resources to instructors to assist them in evaluating the qualifications of a specific use as a fair use. But it is ultimately the instructor's responsibility to make this determination.

- Access to materials on course e-reserves will be password protected and limited to students currently enrolled and their instructors.
- Each course that contains copyright material at its BlackBoard site will include a Notice indicating that the materials are copyright protected.
- Each item on the E-reserves system of BlackBoard will display the title page or any other page from the material that identifies the copyright owner.
- Materials will be removed from course reserves when they are no longer required to support designated courses.

VI. Analog and Digital Material, including:

**Video,
DVD,
Cassette,
CD,
mp3 Files,
Computer Software,
Images**

A. General Copying

Copying media items 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.) It is also illegal to change the format of a media item without the copyright owner's permission. Copying small excerpts of audio or visual material may be permitted for teaching purposes. Please see the copyright policy for amounts that have been deemed to fall under fair use when copying audiovisual excerpts.

When the Seminary makes an audio or visual recording of speakers on campus, those speakers provide us with releases which indicate whether their material can be copied. The catalog record for each recording will indicate whether copies can be made.

A single copy of a music recording can be made for the purposes of constructing aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply.

B. Copying multimedia for classroom projects

1. 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.

2. ??????? How Much ??????? can be copied

- **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.

3. 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.

4. Integrity of Sources

Any alterations of copyrighted items must be noted.

5. Off-Air Recording of Broadcasts, including Satellite TV

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*]:

- i)* Videotaped recordings may be kept for no more than **45 calendar days** after the recording date, at which time the tapes must be erased.
- ii)* Videotaped recordings may be shown to students only within the **first 10 school days** of the 45-day retention period.
- iii)* 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.
- iv)* 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.
- v)* 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.
- vi)* 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.
- vii)* 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.
- viii)* All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
- ix)* 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*].

C. Display/Performance of Audiovisual Works

1.. Films and Video

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.

i) Classroom Display

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.

ii) Use Outside the Classroom

Besides use in classrooms, videocassettes and videodiscs that are owned by the Seminary may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the William Smith Morton Library. These videos may also be viewed at home (e.g., in a dorm room), so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall living room, require explicit permission from the copyright owner for "public performance" rights.

iii) Network Distribution of Video

Without explicit permission for closed-circuit distribution, network transmission of a video is not permissible unless "Classroom Use" structures (p.7-8) are met.

D. Common Questions about Video

- **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, Union-PSCE seeks permission to allow this type of use. A label affixed to the cassette will specify when such permission has been granted.
- **Can a seminary-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.
- **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.

VII. Internet: Digital images and sound

The same rules about copying, display and use discussed previously also apply to material available through the internet. Most websites will generally give information about permissions. You can find sites for copyright free music and images on the Library website.

VIII. Computer Software

Union-PSCE negotiates site licenses with software vendors whenever possible for software products that are selected for extensive use, since these arrangements provide the Seminary community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

Software products that are not licensed to the Seminary 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.

Copyright law is acknowledged to be inadequate in relation to the complexities of software use. EDUCOM, a nonprofit organization that supports the use of technology in education, launched the EDUCOM Software Initiative, which developed a statement of principle intended for adaptation and use by individual colleges and universities. It is here reproduced in full:

A. Common Questions on Computer Software:

- **Is it all right to use a single-user licensed software disk on multiple computers for use at the same time?**
No. If simultaneous use on multiple computers is necessary, ask Information Technology Services about the possibility of a site licensing arrangement with the vendor. Another possibility is that the vendor may offer a price break for multiple copies or "lab packs".
- **What about borrowing software to load into the hard disk memory of my personal computer?**
While the memory capacity of personal computers makes this very tempting,

it is not within the realm of fair use unless you delete it from your computer when you return the borrowed copy. The point is that only one person at a time may use single-user licensed software.

X. The EDUCOM Code

Software and Intellectual Rights

Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgment, right to privacy, and right to determine the form, manner, and terms of publication and distribution.

Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments. Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.

Appendix A
FAIR USE CHECKLIST

This checklist should be used to help you determine whether your projected educational use of copyrighted materials falls under "fair use" as stipulated by U.S. Copyright Law. In making your determination, please check all boxes that apply in the left and right columns. The information in the middle column can add weight to a decision favoring fair use if applicable, but it does not guarantee fair use applies.

If you find that you have marked more boxes in the left column than in the right column, then you can assume that fair use is justified. Sign this form and submit it to Information Technology staff whether you are placing the item on BlackBoard or IT will do it.

If the number of marked boxes in the two columns is equal or there are more marked boxes in the right column, then you should first check to see if the Seminary is covered by its agreement with the Copyright Clearance Center, and if not, either pay for your planned use at the Copyright Clearance Center or seek permission directly from the publisher for your planned use.

In all cases, you should complete and retain a copy of this form in connection with each possible 'fair use' of a copyrighted work.

Name: _____ Date: _____

Course: _____ Term: _____

Signature (REQUIRED)

Guidelines/Rules of Thumb

Favoring Fair Use

Opposing Fair Use

What is the purpose and character of the work to be used?

| | | |
|--|---|---|
| <input type="checkbox"/> Non-profit <input type="checkbox"/> Educational <input type="checkbox"/> Personal | Criticism Commentary News reporting Parody Otherwise "transformative" use | <input type="checkbox"/> Commercial <input type="checkbox"/> Entertainment <input type="checkbox"/> Denying credit to original author |
|--|---|---|

What is the nature of the work to be used?

| | | |
|--|-----------------------------------|---|
| <input type="checkbox"/> Fact or non-fiction based <input type="checkbox"/> Published <input type="checkbox"/> Important to favored educational objectives | A mixture of fact and imagination | <input type="checkbox"/> Unpublished <input type="checkbox"/> Highly creative (art, music, novels, films, plays) |
|--|-----------------------------------|---|

How much of the work do you intend to use?

| | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Small amount <ul style="list-style-type: none"> • Complete article, story or essay of up to 2500 words • Prose: excerpt of not more than 10% of work • One chart, graph, diagram, cartoon or picture per book or periodical issue • Text source: 10% or 1000 words • Poetry: An entire poem of less than 250 words, but no more than 3 poems or excerpts by one poet • Music, Lyrics, Music Video: Up to 10% but not more than 30 seconds total from an individual work • Motion Media: Up to 10% or 3 minutes • Illustrations, Photographs: No more than 5 images by one artist; No more than 10% or 15 images, whichever is less, from any single published work <input type="checkbox"/> Portion used is not the 'heart of the work'. | <ul style="list-style-type: none"> <input type="checkbox"/> Large portion or whole work <input type="checkbox"/> Portion used is 'heart of the work' |
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What would be the effect on the potential market value of the copyrighted work?

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| <ul style="list-style-type: none"> <input type="checkbox"/> User has lawfully acquired copy of original work (Library or personal copy) <input type="checkbox"/> No more than one copy made per student <input type="checkbox"/> Lack of licensing mechanism <input type="checkbox"/> Used for only one term and class <input type="checkbox"/> The decision to use the material does not allow time to get permission (<u>first time use only</u>) <input type="checkbox"/> The evaluation of the first three factors tips the scales in favor of fair use | <p>Original is out of print or otherwise unavailable</p> <p>Copyright owner is unidentifiable</p> | <ul style="list-style-type: none"> <input type="checkbox"/> Could replace sale of copyrighted work <input type="checkbox"/> Avoids payment for permissions in an established permissions market <input type="checkbox"/> Affordable permission is available for using the work <input type="checkbox"/> You make the copy accessible on the Web or in another public forum <input type="checkbox"/> Same text is being used for a second term or second class or repeatedly over the years <input type="checkbox"/> You have very few or no texts that students must purchase so that the vast majority of your required texts are available on e-reserves. |
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