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## INTRODUCTION

It is the intent of Union Presbyterian Seminary (“UPSem” or “the Seminary”) 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 use, 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 policy 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. All questions concerning copyright and acceptable use of materials should be directed to the Director of the Library’s Instructional Resource Center.

The original wording of this document borrowed heavily from the wise policies for copyright formulated by Wellesley College and the Indiana University Bloomington Libraries several decades ago. It has since been edited and revised to reflect current UPSem policies. However, both attribution and gratitude to the original authors must be acknowledged, and in some sections, the influence of the originating documents is very apparent.

### **Philosophy of Intellectual Property**

Anything that is owned by a person or an organization should not be stolen or used without due credit and remuneration. This is true whether the property is tangible or intangible. Ideas, artwork, images, music, films, writings, and other creations are all examples of Intellectual Property. The rights of their creators are protected internationally by copyright laws.

### **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" (©). From the moment a work is created, it is protected. 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).

## Works in the Public Domain

Works that are in the public domain are not covered by copyright law. Their usage belongs to the world at large. However, the criteria for works to be in the public domain change depending on the type of material. See “Copyright Term and the Public Domain in the United States” by Cornell University in this policy’s appendix for a basic guide.

## FAIR USE OF INTELLECTUAL PROPERTY









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. What constitutes fair use is expressed in the form of guidelines rather than explicit rules. However, determining whether usage has gone beyond fair use constitutes a substantial amount of court precedents, as it is frequently litigated in court.






Generally, the criteria for what constitutes Fair Use is clearly defined by the [United States Copyright Office](#), copied here in full:

- ***Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes:*** Courts look at how the party claiming fair use is using the copyrighted work, and are more likely to find that nonprofit educational and noncommercial uses are fair. This does not mean, however, that all nonprofit education and noncommercial uses are fair and all commercial uses are not fair; instead, courts will balance the purpose and character of the use against the other factors below. Additionally, “transformative” uses are more likely to be considered fair. Transformative uses are those that add something new, with a further purpose or different character, and do not substitute for the original use of the work.
- ***Nature of the copyrighted work:*** This factor analyzes the degree to which the work that was used relates to copyright’s purpose of encouraging creative expression. Thus, using a more creative or imaginative work (such as a novel, movie, or song) is less likely to support a claim of a fair use than using a factual work (such as a technical article or news item). In addition, use of an unpublished work is less likely to be considered fair.
- ***Amount and substantiality of the portion used in relation to the copyrighted work as a whole:*** Under this factor, courts look at both the quantity and quality of the copyrighted material that was used. If the use includes a large portion of the copyrighted work, fair use is less likely to be found; if the use employs only a small amount of copyrighted material, fair use is more likely. That said, some courts have found use of an entire work to be fair under certain circumstances. And in other contexts, using even a small amount of a copyrighted work was determined not to be fair because the selection was an important part—or the “heart”—of the work.
- ***Effect of the use upon the potential market for or value of the copyrighted work:*** Here, courts review whether, and to what extent, the unlicensed use harms the existing or future market for the copyright owner’s original work. In assessing this factor, courts consider whether the use is hurting the current market for the original work (for example, by displacing sales of the original) and/or whether the use could cause substantial harm if it were to become widespread.

## Works Covered by Creative Commons Licensing

Some scholars and researchers, as well as artists and other people who create works protected by the copyright laws, are choosing to publish their work with a blanket license giving some re-use rights to their creations. These blanket agreements are generally known as the Creative Commons. The license can be given under one of six different types. The following descriptions are taken directly from the [Creative Commons Licensing](#) home site and listed from the least restrictive to the most restrictive:

- **CC BY:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. CC BY includes the following elements:  
BY  – Credit must be given to the creator
- **CC BY-SA:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms. CC BY-SA includes the following elements:  
BY  – Credit must be given to the creator  
SA  – Adaptations must be shared under the same terms
- **CC BY-NC:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. It includes the following elements:  
BY  – Credit must be given to the creator  
NC  – Only noncommercial uses of the work are permitted
- **CC BY-NC-SA:** This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms. CC BY-NC-SA includes the following elements:  
BY  – Credit must be given to the creator  
NC  – Only noncommercial uses of the work are permitted  
SA  – Adaptations must be shared under the same terms

- **CC BY-ND:** This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, and only so long as attribution is given to the creator. The license allows for commercial use. CC BY-ND includes the following elements:
  - BY  – Credit must be given to the creator
  - ND  – No derivatives or adaptations of the work are permitted
- **CC BY-NC-ND:** This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for noncommercial purposes only, and only so long as attribution is given to the creator. CC BY-NC-ND includes the following elements:
  - BY  – Credit must be given to the creator
  - NC  – Only noncommercial uses of the work are permitted
  - ND  – No derivatives or adaptations of the work are permitted

### Orphan Works

Orphan Works are materials that are clearly protected by copyright, but whose rights holders cannot be found. Unfortunately, these works are still protected, so if using them does not qualify within the Fair Use exemption, then another resource should be considered.

## PRINTED MATERIALS

### Definition of Printed Materials for This Policy

Printed materials include any static texts or images that are written or drawn. This includes essays, poetry, articles, books, graphs, tables, and infographics. It also includes drawings, paintings, sketches, photographs, and other artwork. For the purposes of this policy, electronically downloaded creations that have been disseminated in print format are considered printed material. Musical scores, however, are not; their usage is described in another part of this policy.

### Works that May be Used Freely

Increasingly, scholarly publications such as journal articles include a note offering the right to copy for educational purposes. This is the “creative commons” license described above. 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 1/1/1978.
3. Most United States government documents.



Once a work has acquired public domain status it is no longer eligible for copyright protection. Please see “Copyright Term and the Public Domain in the United States” by Cornell University in this policy’s appendix for a basic guide to this subject.

### **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

### **Photocopying or Other Means of Duplication**

*Single Copies for Scholarly Needs or Library Reserve.* When all a member of the Seminary community needs is a single copy of a work, then a portion may be duplicated (photocopied, scanned, or other means) as long as it meets the following parameters:

1. One chapter from a book.
2. One article from a journal issue or newspaper. A short story, short essay, or short poem.
3. A chart, diagram, drawing, graph, cartoon, or picture.

Multiple chapters or articles may be duplicated, but the total amount must be 10% of the entire publication. For example, no more than thirty-five (35) pages may be copied from a 350-page book; similarly, no more than fifteen (15) pages from a 150-page journal.

*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."

The Seminary Library frequently requests materials from other libraries through a process known as interlibrary loan. When this happens, the lending library considers the Seminary Library to be the legal borrower; therefore, the duplication rules fall on the Library itself, rather than on the Seminary Library’s requesting patron.

This means that the Seminary Library’s interlibrary loan borrowing activities are restricted in the aggregate by the "[CONTU Guidelines](#)", which cap the amount of photocopying from recent periodicals that the Library’s ILL office is able to request for the Seminary community in any calendar year. This effectively allows the Library to borrow five articles from one journal within the most recent five years of that journal’s publication – five cumulative articles, not five per patron.

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 "CONTU Guidelines" are available in the Interlibrary Loan office.



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.* This policy pertains to all duplication devices used by Seminary employees and students. Therefore, every photocopier and scanner on campus that is owned by the Seminary or one of its educational centers 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.

**Copyright for Physical Materials in the Classroom**

*Multiple Copies for Classroom Use.* When instructors wish to make multiple copies of protected printed materials, then they should ensure that their copies do not infringe upon the creators' copyrights. They may not use more than one (1) short poem, article, story, essay or two (2) excerpts from the same author, nor more than three (3) from the same collective work or periodical volume during a term. Also, they may duplicate no more than nine (9) such multiple copies for one course during a term.

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

### 1. **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.  
(NB: Each of the numerical limits above may be expanded to permit the completion of an unfinished prose paragraph or line of a poem.)
  - **Illustration:** Only 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.
2. **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.
3. **Cumulative Effect.** The copying of the material is for only one course, with no more than one copy per student in the course.

*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 by 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.

*Duplicating Printed Scores and/or Sheet Music.* In most cases, duplicating copyrighted printed music without obtaining an appropriate license is not allowed. However, some special circumstances arise that permit copying, most usually when the work is not intended for performance but used in a classroom setting.

- *For a Performance.* Emergency copying is permitted so long as replacement copies are subsequently purchased to replace the copies.
- *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 Duplicated Music Excerpts (Non-Performance Use).* These follow the same guidelines as course packets that use other printed materials, with the added caveat that they may **not** be used for the public performance of the music. Every musical excerpt in a course packet, if derived from copyrighted material, requires permission, either from the copyright owner or through checking with the Seminary's copyright umbrella licenses, such as Christian Copyright Licensing International to see if the excerpt is covered, and if not, paying a royalty fee to the owner. Each item in the packet also must include a notice of copyright -- e.g., "Copyright 2020 by Michael Joncas." Individuals who purchase course packets should not be charged in excess of cost. Expect several weeks' delay in cases where copyright owners are elusive.

### **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 before photocopying a large portion of a work or an entire work, or to produce multiple copies of chapters or periodical articles.

## **ELECTRONIC TEXTS AND IMAGES**

### **Controlled Digital Lending (CDL)**

Controlled digital lending involves libraries making materials available in print available in electronic form and circulating them as if they were the original printed title to a controlled population of people. For each copy that is circulated, a print copy not in circulation needs to be owned by the lender. More specifically, as the Library Future's CDL site developed by New York University's Engelberg Center on Innovation Law and Policy describes:

"Controlled Digital Lending (CDL) encompasses practices and technologies that allow libraries to loan print books to digital patrons in a "lend like print" fashion. Through CDL, libraries use technical controls to ensure a consistent "owned-to-loaned" ratio, meaning the library circulates the exact number of copies of a specific title it owns, regardless of format, putting controls in place to prevent users from redistributing or copying the digitized version. When CDL is appropriately tailored to reflect print book market conditions and controls are properly implemented, CDL may be permissible under existing copyright law. CDL is not intended to act as a substitute for existing electronic licensing services offered by publishers. Indeed, one significant advantage of CDL is addressing the "Twentieth Century Problem" of older books still under copyright but unlikely ever to be offered digitally by commercial services."<sup>1</sup>

Practically, what this means is that the Library can make limited scans that can be used in the electronic reserves area, even if the title itself is not available electronically. Individual faculty members may not do this, however. Therefore, any scans under the principles of Controlled Digital Lending must be routed through the Library.

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<sup>1</sup> "Controlled Digital Lending," Controlled Digital Lending, accessed August 16, 2023, <https://controlddigitallending.org/>.

However, it should be noted that this is an area that is currently under litigation. The courts have allowed that libraries (and only libraries) may make available digital versions of materials that they have scanned from their own collections as long as there are no other digital versions of the material available. This would include entire books otherwise protected by copyright but only available in print. Once the cases under review are decided, these rights may change.

### **Copyright for Materials in the Seminary's Learning Management System (LMS)**

UPSem 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 electronic reserve service on the Seminary's LMS. These policies do not apply to materials that are openly posted on the World Wide Web by the intellectual property owners 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 the Seminary's LMS.
- 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 to be fair use and does not fall under the definition of CDL.
- 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 Director of the Library's Instructional Resource Center 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.

*Responsibilities for the use of copyrighted materials on E-reserves.* When using materials made available on the Seminary's LMS, everyone who has access to those materials bears some responsibility to ensure that the usage does not infringe on the authors' or the artists' copyrights.

### 1. **Instructor Responsibilities**

- All materials made available by instructors on the Seminary's LMS must support course-related teaching, scholarship, or research.
- Instructors who make materials available through the LMS 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 with the relevant course syllabus to the Academic Dean's Office on their campus. If additional copyrighted materials are used after these materials are submitted, the faculty member is required to submit this information to the Academic Dean's Office.*
- When permissions are needed, the instructor will obtain permission first by licensing permission from the Copyright Clearance Center and, if not covered there, by contacting the copyright holder. Instructors are responsible for providing screenshots from the 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 Seminary staff, only the amount needed to accomplish the specific educational purpose should be copied.

### 2. **User Responsibilities**

- All materials placed on course reserves, whether in print or electronic, 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.

### 3. **Library Responsibilities**

- 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~~ **on** its LMS site will include a Notice indicating that the materials are copyright protected.
- Each item on the E-reserves system of the LMS 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.

*Linking vs. Uploading Texts.* If the article or e-book is available in full-text on the Library's electronic holdings, the instructor may include a permalink to it. The Library staff can help with this if the instructor needs help. While uploading an article without licensing may be problematic, the permalink is simply sending students to materials already licensed for them to access individually. Multiple copies are not made by a single instructor; personal copies are made by each student.

## AUDIOVISUAL WORKS

### Educational Multimedia Fair Use When Creating New Works

The Educational Multimedia Fair Use Guidelines **do not cover** showing audiovisual materials in a classroom setting. Key elements of the 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 either specific licensing by title or 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.

- *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.* 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. An example of an opening screen notice may be found below:

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.
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*Integrity of Sources.* Any alterations of copyrighted items must be noted.

## PHYSICAL RECORDINGS USED IN PERFORMANCE OR IN THE CLASSROOM

### Sound Recordings and Live Music or Spoken Performances

Music, readings, and lectures, whether recorded, streamed on the internet, and/or performed live, are protected by copyright law. The exceptions are when the music has been licensed in the Creative Commons or is in the public domain, as earlier described.

*Performances.* Most performed music in the Seminary falls under two distinct categories, and each is treated in slightly different ways. The most obvious is during a religious observance, such as the weekly chapel service. However, classes may use music during a class setting, whether recorded or performed.

- *Music in Religious Observances.* Seminary religious observances generally fall under the performance exemption for religious service. However, printing sheet music in worship aids is not permitted without a license or permission from the copyright holder. Similarly, performed music may not be recorded or streamed, even if it is part of the service, without similar permission. For this reason, the Seminary maintains umbrella licenses for many pieces. It is incumbent on the community member planning to record or stream to ascertain whether the scheduled works are fully licensed.
- *Classroom Exemption.* Certain educational usage of materials are clearly protected by a classroom exemption to the copyright law. Before using in class, instructors should use the Seminary's Fair Use Checklist. If uploading to the LMS for a specifically distance course, see the Digital and Streamed Audiovisual Materials section on page 16 and use the TEACH Checklist to verify that the planned usage is exempt.

## **Films and Video**

Possession of a film or video does not automatically confer the right to show the work, nor does access to it online via a streaming service. The copyright owner specifies, at the time of purchase or licensing, the circumstances in which a film or video may be "performed". For example, most DVDs usually bear a label that specifies "Home Use Only". Whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

*Use Outside the Classroom.* Besides use in classrooms, videocassettes, videodiscs, and streamed films that are owned or licensed by the Seminary may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the 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 or fall under the Library's umbrella license. Such cases must be reviewed and approved by the Director of the Instructional Resource Center.

*Classroom Display in an In-Person Class.* 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, **all** of which must be met [from “What Educators Should Know About Copyright,” by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

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 legally reproduced copy including the copyright notice.

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.

### **Off-Air Recording of Broadcasts, including Satellite TV**

Licenses may be obtained for copying an 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*].

### **Duplication of Audiovisual Materials**

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.

### **Distribution via Closed Circuit Broadcasting (NOT covered by TEACH Act)**

Without explicit permission for LMS distribution, network transmission of a video is not permissible.

## **DIGITAL OR STREAMED RECORDINGS USED IN PERFORMANCE OR IN THE CLASSROOM**

### **Online Distribution Via Learning Management Systems for Distance Learning (the TEACH Act)**

The Technology, Education, and Copyright Harmonization (or TEACH) Act provides expanded educational usage of protected works when used in accredited distance education courses. This Act only comes into effect when a course is conducted primarily online rather than using face-to-face instruction; classes that are not expressly classified as distance courses are NOT covered under this Act. The usage must be accompanied by mediated instructional activities and limited only to the students enrolled in the specific course. Further, the digitalization of analog materials is expressly forbidden unless such materials are not available digitally and are strictly limited to usage in the class.

The scope of this provision is limited in such a way as to discourage user downloading or distribution of the work. Works created for classroom instruction (such as textbooks, video courses, or other classroom resources) or for distance learning are specifically exempted from this provision – if an instructor wishes to include such works they **must** seek permission from the copyright holder. Please see the TEACH Act Checklist and the text of the TEACH Act (in the Appendix) for more thorough information.



## **COPYRIGHT, THE INTERNET, AND COMPUTERS**

In general, works found on the internet are considered copyrighted. This is true whether the work is found on social media, a streaming service, or scholarly site. 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; if not easily visible, there is usually a footer that describes legal usage.

Public Domain and creative commons licensed music and images are available on the Library's copyright guide. Similarly, there is a Frequently Asked Questions section that discusses specific cases of internet usage.

### **Computer Software**

UPSem 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.

### **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.



## LIBRARY OPTIONS AND RESOURCES

### 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.

UPSem’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.*

- **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 section on “*Duplicating Printed Scores and/or Sheet Music.*”

### Licensing Electronic Text and Streaming Resources

The Library licenses both curated collections and individually selected electronic texts resources through its databases and online vendors, as well as through collaborative partnerships with other institutions, as well as licensing videos and audiobooks. These are not licensed for duplication, but they may be accessed via permalinks by any authorized member of the community. Instructors who wish to include streaming resources into their courses should consult the Director of the Instructional Resource Center for selection criteria and the permalinks for their desired resource.

### Course Research Guides

The Library offers access to custom-designed research guides to licensed material for any instructor who requests them. These can include permalinks to Library resources provided via a bibliography by the instructor to the guide creator. A guide may also include embedded licensed videos, links to outside resources, and other similar content. The course guide can provide an access portal for students to link them directly to protected but licensed e-books, articles, videos, and other online materials specifically chosen to aid their course-related research and information needs.



### **Umbrella Licensing for the Public Performance of Video on Campus**

The Library maintains an umbrella license for the public performance of some films for usages that do not fall within the Fair Use exemption. Additionally, it can help secure licenses through its partnerships and other vendors. Should a specific license be required, it is the responsibility of the sponsoring department or campus group to purchase it, although the Library will coordinate with their vendors.



## **APPENDICES**

Fair Use Infographic

Fair Use Checklist (attached)

TEACH Act Checklist Infographic (attached)

[Copyright Term and the Public Domain in the United States \(©Cornell University\)](#)

[Copyright Online Resource Guide](#)

[Copyright Circular 21](#)

[TEACH Act Toolkit](#)

[DMCA](#)

[Copyright FAQ](#)



## **COPYRIGHT ASSESSMENT**

### **(Required to Place Material on the Seminary's LMS)**

This assessment must be completed by the faculty and provided to the Academic Dean's Office on their campus together with a copy of the related syllabus if a faculty member wishes to place any copyrighted item on the Seminary's LMS that has not already been licensed for such use by the Seminary Library which is using links provided by the Library. They should provide a bibliography of the materials, and use the attached fair use and media TEACH Act infographics to determine fair use. The infographic helps in determining whether a projected educational use of copyrighted materials falls under "fair use" as stipulated by U.S. Copyright Law or requires payment for permission from the publisher.

In making your determination, please analyze all of the factors listed. Consider any factors relating to the transformative nature of your usage, such as: providing commentary or criticism; using the material to create something truly new; and/or changing the material in such a way as to add significant value to scholars and other members of the public. While these can add nuance to questionable usage, they do not, in and of themselves, guarantee fair use applies.

If the case for and against covering the work under the doctrine of fair use of the work seems to be equally strong, or if it is more heavily weighted towards not being covered, please contact the Seminary Library. They will advise you on steps you can take to license the work appropriately. See the "Copyright in the Seminary" guide for more information at <https://upsem.libguides.com/copyright/home>.

In all cases, faculty should:

- Complete and sign the Copyright Assessment Cover Page
- Attach a copy of their course bibliography **and** their course syllabus
- Make a copy for themselves

**Once this is done, then they should submit the signed cover page, bibliography and syllabus to the Academic Dean's Office on their campus, and retain a copy for their files.**



## **COPYRIGHT ASSESSMENT COVER PAGE**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Course: \_\_\_\_\_

Term: \_\_\_\_\_

I confirm that the materials that will be placed on the Seminary's LMS comply with the Seminary's copyright policy, and when evaluating the copyrighted titles, I used the Fair Use infographic. The titles on the attached bibliography fit into one of the categories below:

### Materials that need to be assessed for Fair Use

1. Copyrighted – My usage is Fair Use
2. Copyrighted – My usage requires a license, which has been purchased
3. Copyrighted – I have obtained written permission from item's creator(s)

### Materials that do not need to be assessed for Fair Use

4. Linking to document or media from the Library or the Internet
5. Creative Commons
6. Public Domain

\_\_\_\_\_  
**Signature (Required)**

\_\_\_\_\_  
**Date**




# IS IT FAIR USE?

## A GUIDE TO THE FAIR USE STATUTE OF COPYRIGHT LAW

### What is FAIR USE?

Fair use is covered under section 107 of US Copyright law. It allows for some uses of copyrighted works without obtaining permission, as long as that use is considered fair. Some of these uses include education, research, commentary, criticism, news reporting, and satire.





### HOW FAIR USE IS DETERMINED

#### Balancing the four factors

To determine if a use would be considered fair, the law requires us to consider four factors detailed in the fair use statute. Each of these factors must be considered separately. Fair use is then evaluated by weighing all of these factors and determining if the balance supports fair use.

## THE 4 FACTORS

 Supports Fair Use		 Does Not Support Fair Use
Nonprofit, Educational, Research, Personal Use, News Reporting, Commentary, Criticism, Transformative work	<b>1</b> Purpose and character of the use	Commercial, For Profit, Entertainment
Factual Work Published Work	<b>2</b> Nature of the original work	Fiction, Creative Work, Unpublished Work
Smaller Amount, Portion Used Not Significant to Work	<b>3</b> Amount and substantiality of the portion used	Larger Amount, Heart of the Work
No Significant Effect on Market, User Owns Legal Copy, Permission or Licensing is Unavailable	<b>4</b> Effect of use on the potential market for the original work	Has Effect on Market, Use Substitutes for a Potential Sale, Permission or Licensing is Available

**REMEMBER:** No single factor is decisive of fair use  
Only a federal court can determine whether a particular use is fair under the law. Courts judge fair use claims on a case-by-case basis.

**for more information:**  
Copyright Law of the United States <https://www.copyright.gov/title17/>



“Copyright, Plagiarism, Fair Use.” Accessed September 7, 2023. <https://educatorpages.com/site/group3/pages/copyright-plagiarism-fair-use>.



## TEACH Act Acceptable Use Checklist

### Using Protected Works for Accredited Distance Classes



*This guide was adapted from "The TEACH Expanded Checklist" published by LSU Libraries.  
<https://lib.lsu.edu/content/teach-expanded-checklist>*

## STEPS TO CLEARING COPYRIGHT

I. Use the “Fair Use Checklist” to determine if your use represents “fair use” – (the checklist is available on the Library’s online copyright guide at <http://library.upsem.edu>)

II. If the use appears NOT to represent “fair use” then seek copyright permission by:

A. Looking for a licensed copy in the Library’s databases or e-book collection

1. For articles, search the Library’s databases:  
<https://library.upsem.edu/research-resources/online-databases/>
2. For e-books, search the Library’s catalog:  
[https://upsem.ent.sirsi.net/client/en\\_US/default](https://upsem.ent.sirsi.net/client/en_US/default)
3. Use the “permalink” option to link to the work. DO NOT DOWNLOAD THE WORK ITSELF! It’s only Fair Use if each student downloads their own copy.
4. If you need help to create working permalinks, contact the Library’s Director of Public and Electronic Services.

B. Individually licensing titles:

1. Contact the Director of the Library’s Instructional Resource Center.
2. Obtain payment permission for licensing articles or single-course usage.
3. If the item is a document, consider contacting the author(s) for free permission to use it.

III. Give the signed “Copyright Assessment Cover Page” together with a copy of the relevant syllabus and a bibliography of course materials to the Academic Dean’s Office on your campus.

IV. If payment is necessary, give the Invoice to Jennifer Britton, who will charge the cost to your department.