

REPRODUCING COPYRIGHTED MATERIAL

This is the policy of the University of Notre Dame (“the University”) governing the reproduction or copying of copyrighted materials. This policy complements the University’s Intellectual Property Policy, Responsible Use of Information Technologies policy, and other relevant policies and guidelines.

1. It is the policy of the University to comply with the United States Copyright Law of 1976, as amended (“the Copyright Act”) and to avoid exceeding the bounds of permissible copying under the fair use doctrine, while at the same time maximizing the educational benefits which flow from the use of copyrighted materials in the classroom and in other educational settings. All Notre Dame faculty members, administrators, staff members and students are expected to comply with this policy, with applicable state and federal law, and with the terms of applicable contracts and license agreement(s) in reproducing copyrighted materials.

2. Only copyrighted materials are subject to the restrictions contained in this policy.

A. Uncopyrighted materials may be copied freely and without restriction. Examples of uncopyrighted materials include, but are not limited to: works authored by the United States Government and works that are in the public domain.

B. The absence of a copyright notice, standing alone, cannot be used to determine whether a work is copyright protected.

C. A work should be presumed to be copyright protected, unless:

I. It is authored by the United States Government,

II. It was published prior to 1923, or

III. Reliable written notice or information from the copyright holder expressly indicates that the copyright holder intends the work to be in the public domain.

3. **IN GENERAL.** The copyright owner’s written permission must be obtained prior to copying any copyrighted material unless the copying constitutes a “fair use” under the Copyright Act. Fair use is a legal principle that provides certain limitations on the exclusive rights of copyright holders.

A. Section 107 of the Copyright Act identifies four factors to be considered in determining whether a particular use is a “fair use.” Although there is no simple test to determine what is a fair use, these factors should be considered in each instance, based upon the particular facts of each case, to determine whether a use is a fair use:

I. The purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

- II. The nature of the copyrighted work;
- III. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- IV. The effect of the use upon the potential market for or value of the copyrighted work.

These factors are the ultimate test of a fair use. While only the courts can authoritatively determine whether a particular use is fair use, the Guidelines set forth in attached Exhibit "A" provide specific guidance for applying the factors in an educational setting. Complying with the guidelines provides a safe harbor for faculty, administrators, staff and students with respect to what will constitute a "fair use" under the Copyright Act. Uses that exceed the Guidelines may or may not be fair use. For this reason, Notre Dame faculty, staff and administrators are strongly encouraged to contact the University's Office of General Counsel if they believe a proposed use, while not permitted under the Guidelines, may constitute a fair use.

B. Notre Dame faculty, staff administrators and students may make copies without first obtaining the written permission of the copyright holder in the following situations:

- I. If copying is allowed under the attached Guidelines;
- II. If the works to be copied are not copyright protected or their copyright protection has expired (e.g., works first published before 1923);
- III. Even if copying is not protected under the Guidelines, if prior to copying the University's Office of General Counsel issues permission to copy based upon its opinion that the copying would be fair use. In some cases, copying that is not within the Guidelines may nevertheless constitute fair use. Therefore, faculty, staff, administrators are strongly encouraged to seek the advice of the Office of General Counsel if they believe the copying they propose, though not strictly within the Guidelines, may constitute a fair use.

C. For purposes of this policy, written permission from a service operating for the purpose of obtaining permission to copy works (such as the Copyright Clearance Center) constitutes the written permission of the copyright holder.

4. COPYRIGHTED SOFTWARE, ON-LINE SERVICES AND OTHER TECHNOLOGIES. It is the policy of the University that any copying or reproduction of copyrighted computer software, access to on-line services or electronic data resources, or use of other computing resources and technologies involving University owned or operated computing equipment, including any equipment or computing resources used in or in connection with any buildings, facilities or programs owned or operated by the University, must be in accordance with the Copyright Act, all applicable state and federal laws, and the terms of any applicable contracts or license agreements. As with other types of work, Notre Dame faculty members,

administrators, staff and students generally may not make copies of copyrighted software or access prohibited on-line services or technologies without the appropriate written permission or authorization. The following special rules apply to software and copies may be made in accordance with them:

A. Section 117 of the Copyright Act permits the making of a single or archival back-up copy.

B. Most software and other resources residing on University owned or maintained equipment or networks are licensed to the University as an entity. The terms of the license agreement may give the University permission to make copies of software in excess of the single archival copy permitted by the Copyright Act. Each software license agreement is unique and provisions may vary from company to company and from license to license. Whether a user may copy licensed software in excess of the single, archival copy may be determined only by examination of the University's license agreement with the software copyright owner.

5. **LEGAL DEFENSE OF STAFF MEMBERS.** The University of Notre Dame will provide, at its expense, a legal defense for any staff member against charges or allegations of copyright infringement arising out of the scope of his or her University employment with respect to any copying or reproduction done at the request of a faculty member or administrator, unless the copying or reproduction was undertaken with the intent of violating state or federal law or the terms of a license agreement.

6. **LEGAL DEFENSE OF FACULTY AND ADMINISTRATORS.** The University of Notre Dame will provide, at its expense, a legal defense to a charge or allegation of copyright infringement brought against a Notre Dame faculty member or administrator acting within the scope of his or her University employment in the following circumstances:

A. If the copying or reproduction was within the Guidelines in attached Appendix "A",

B. If the copying or reproduction was authorized by a valid University software license Agreement,

C. If, prior to copying, the University's Office of General Counsel, issued permission to copy or reproduce the work(s) based upon its opinion that the copying constitutes a fair use, or

D. If the permission of the copyright holder was obtained prior to the copying.

In all other circumstances, a Notre Dame faculty member or administrator shall be personally responsible for the expense of defending an action for copyright infringement, as well as for the cost of any settlement, judgment, fine, or damages, including attorneys fees, interest and costs.

APPENDIX "A"

The purpose of these guidelines is to describe the minimum standards of educational fair use for photocopying of written materials under Section 107 of the Copyright Act of 1976, 17 USC 107, as amended. The guidelines reflect an agreement in 1976 between representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc.

GUIDELINES FOR CLASSROOM COPYING OF BOOKS AND PERIODICALS

I. Single Copying for Teachers

A single copy may be made of any of the following or any part thereof by or for any faculty or staff member at his or her individual request:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay or short poem, whether or not from a collective work; or
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, onewspaper.

II. Multiple Copies for Classroom Use:

Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the faculty member teaching the course for classroom use or discussion, provided that:

- A. The copying meets the following tests of brevity and spontaneity:
 - 1. Brevity
 - a) Poetry
 - (1) A complete poem if less than 250 words and if printed on not more than two pages; 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 a minimum of 500 words.
 - b) Prose

- (1) All or any portion of a complete article, story or essay of 2,500 words or less, 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 a minimum of 500 words.

c) Illustration

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

d) "Special" works

Certain works in poetry, in prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph b) above notwithstanding, such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

[Each of the numerical limits stated in a) and b) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

2. Spontaneity

- a) The copying is at the instance and inspiration of the individual faculty member, and,
- b) 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.

B. The copying meets the following cumulative effect test:

- a) The copying of the material is for only one course in the school in which the copies are made.
- b) 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 one class term.
- c) There should not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in b) and c) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

- C. Each copy includes a notice of copyright.

III. PROHIBITIONS AS TO I AND II ABOVE

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying may not be used to create or to replace or substitute for anthologies, compilations or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
- B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying may not:
 - 1. substitute for the purchase of books, publisher’s reprints or periodicals;
 - 2. be directed by higher authority; or
 - 3. be repeated with respect to the same item by the same teacher from term to term.
- D. No charge may be made to the student beyond the actual cost of the photocopying.

HOW TO OBTAIN PERMISSION

Permissions

I. Obtaining Permission by Written Request

When multiple photocopying of copyrighted material is not within the Guidelines and the Office of General Counsel has not given written authorization otherwise, staff or faculty members should request permission from the copyright owner. Communication of complete and accurate information to the copyright owner will facilitate the request. Although alternatives may be acceptable, the Association of American Publishers suggests that the following information be included in a request for permission to copy in order to expedite the process:

- A. Title, author and/or editor, and edition of materials to be duplicated;
- B. Exact material(s) to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material;
- C. Number of copies to be made;
- D. Use to be made of duplicated materials;
- E. Form of distribution (classroom newsletter, etc.);
- F. Whether the material is to be sold; and
- G. Type of reprint (ditto, photocopy, offset, typeset).

Additionally, the requester should include the expected duration of use. The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be obtained from The Literary Marketplace (for books) or Ulrich's International Periodicals (for journals), both published by the R. R. Bowker Company. For purposes of proof and to define the scope of the permission, it is important that the permission be in writing. Although not preferred, permission may also be obtained by facsimile or electronic mail requests.

II. Obtaining Permission by Telephone

If occasional time exigencies obviate the usefulness of the prior request letter, then the infrequent use of telephone permissions is acceptable. The person receiving permission should make written notes of the time and date of the call; the name of the person authorizing copying; and the extent of the permission granted; and request and obtain a follow-up permission letter or other correspondence from the copyright proprietor.

**NOTRE DAME GUIDELINES FOR COPYING AND USES OF MUSIC IN THE
EDUCATIONAL ENVIRONMENT**

I. Emergency Copying of Music

A. Permissible Uses

1. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
- 2.(a) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. The number of copies may not exceed one copy per student.
- 2.(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is:
 - (1) confirmed by the copyright proprietor to be out of print, or
 - (2) unavailable except in a larger work may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.
3. Printed copies that have been purchased may be edited or simplified, provided that the fundamental character of the work is not distorted, that the lyrics (if any) are not altered, and that no lyrics are added, if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This permitted copying pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or to replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.

3. Copying for the purpose of performance, except as in A(1) above.
 4. Copying for the purpose of substituting for the purchase of music, except as in A.1 and A.2 above.
 5. Copying without inclusion of the copyright notice which appears on the printed copy.
- C. It is the policy of the University that an immediate order for the purchase of replacement copies is to be placed on a one for one basis, and all reproduced copies of the musical work are to be destroyed upon receipt of the ordered copies. Any other method of calculating the number of replacement copies to be ordered, such as an inventory taken after the performance, is unacceptable. It is expected that staff and faculty routinely involved with performances will emphasize planning procedures so as to avoid use of emergency copying on a routine basis.
- D. With respect to all other copying or use of music outside the context of the academic or classroom setting, the policy of the University to comply with the provisions of United States Copyright law and to encourage all faculty, staff, and students in their personal capacities to comply with this law.

**Suggested Notice to be Placed on Campus Photocopy
Machines, Computer Clusters and in Campus Copy Centers**

Unauthorized copying of copyrighted works, including without limitation, books, periodicals, software and musical works, may be unlawful and may infringe rights of the copyright owner. Copying is subject to the University of Notre Dame's policy statement concerning "Reproducing of Copyrighted Material." Any use of these computer or duplicating facilities by students, faculty or staff for the unauthorized duplication of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by law.