

Copyright Policy of Mills College

It is the intent of Mills College that all members of the college community adhere to the provisions of the United States copyright law. Members of the Mills College community who willfully disregard the copyright policy do so at their own risk and assume all liability. The information included in this document provides guidelines for Mills community members who wish to reproduce, alter, or perform works, e.g., printed materials, audio-visual materials, artworks, computer software, etc., that are protected by copyright law. The full text of the law, plus subsequent analysis and commentary, are available in the F.W. Olin Library.

Overview of Copyright

"The primary objective of copyright is not to reward the labour of authors, but [t]o promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art."

-Justice Sandra Day O'Connor (1991)

Copyright is an important form of legal protection designed to promote the progress of science and the arts by securing for an author the benefits of his or her original work of authorship for a limited time. Publication is not essential for copyright protection.

Copyright Act of 1976

Section 106 of the Copyright Act of 1976 generally gives the owner of copyright the exclusive right to do and to authorize any of 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 (in the case of literary, musical, dramatic, choreographic, pantomime, motion picture, or audiovisual work); and
5. publicly display the work (in the case of literary, musical, dramatic, choreographic, pantomime, pictorial, graphic, sculptural, motion picture (including individual images), or other audiovisual work).

Works that have never been, or are no longer, protected by copyright are in the "public domain, and can be copied, republished, or otherwise used. Works that are protected by copyright may often be legally used in a limited way by educators under exemptions (§ 107-120) commonly referred to as "fair use."

Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) of 1998 does not make changes that affect the fair use section of the 1976 Copyright Act. Nevertheless, the Act does address issues that relate to education. Title II of the DMCA establishes limits on copyright infringement liability for online service providers. Colleges and universities are included in the definition of "online service providers." Title IV of the Act made provisions for a study of copyright and distance education that as of 2005 are still under consideration by Congress. The DMCA also amends exemptions for libraries and archives to accommodate digital technologies in the preservation of materials.

Sonny Bono Copyright Term Extension Act

The Sonny Bono Copyright Term Extension Act of 1998 extended copyright terms by 20 years. Prior to this act an author's copyright would last until fifty years after his death. Now copyright lasts until seventy years after the author's death, and copyrights for works of corporate authorship last 75 to 95 years. The act also affected copyright terms for copyrighted works published prior to January 1, 1978, increasing their term of protection by 20 years as well.

Public Domain

Published Works with Expired Copyrights

The copyrights issued to works prior to 1923 have expired and this material may be copied without restriction. Works published between 1923 and 1963 are protected for 28 years and can be renewed for 67 years, if they were published with a notice. Works published between 1964 and 1977 are protected for 28 years, and the copyright has been automatically extended for 67 years. Copyrights granted after 1923 may have been renewed; however may not contain notice of the renewal. Therefore, it should be assumed all works dated 1923 or later are covered by a valid copyright, unless information to the contrary is obtained from the owner or the U.S. Copyright Office.

Unpublished Works

Unpublished works, such as theses and dissertations, are protected by the standard copyright if they were produced after January 1, 1978. If such a work was created before January 1, 1978 but has not been copyrighted, the work is protected for the life of the author plus 70 years, and will not expire before December 31, 2002.

Government Publications

All U.S. Federal Government publications are not protected by copyright and may be freely copied. Works sponsored by, but not published by, the Federal Government may be protected by copyright. The copyright status of works published by state governments varies from state to state.

Public Domain Chart

This following chart was produced by Lolly Gasaway of the University of North Carolina is made freely available. For updates to the chart and more information, look at Gasaway's webpage:
<http://www.unc.edu/~unc1ng/public-d.htm>.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years ¹ (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²)
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice ³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1 Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

Fair Use

The Copyright Act of 1976 sought to balance the right of authors to compensation for their creations with the right of the public to use these materials. Embedded in section 107 of the Act, this doctrine is referred to as "fair use." The doctrine of fair use supports the limited copying of copyrighted materials for educational purposes, and is therefore of primary concern to educators. Four factors must be considered in determining fair use:

1. the purposes and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for, or value of, the copyrighted work.

The factors should be weighed and a judgment should be determined whether the intended use is within the spirit of the fair use doctrine. In cases of doubt, the permission of the copyright holder should be sought.

Faculty members, libraries and the entire college community must share in the responsibility for compliance with fair use provisions of the copyright law. Respect for the intellectual property and creativity of authors is a crucial component in academic discourse. Authors and publishers are entitled to acknowledgment, right of privacy, and the right to determine the manner and terms by which their publications are disseminated. Educational status does not exempt individuals or colleges from liability for multiple or unauthorized copying.

Note: Any serious questions concerning whether particular copying constitutes "fair use" should be directed to the Mills College Library or College Counsel.

Research and Fair Use

Faculty and students may use material still under copyright for scholarly research, class preparation, and peer conferences, provided that the fair use guidelines are followed.

Guidelines for Classroom Use

Photocopying

Under the following conditions, teachers may display or perform any lawfully obtained material within an instructional setting without needing to obtain permission, providing that:

- the distribution of the same photocopied material does not occur every semester;
- only one copy is distributed for each student which must become the student's property;
- the material includes a copyright notice on the first page of the portion of material photocopied;
- the students are not assessed any fee beyond the actual cost of the photocopying;
- the amount of material distributed should not exceed certain brevity standards:
- a prose work may be reproduced in its entirety if it is less than 2500 words; if the work exceeds such length, the excerpt reproduced may not exceed 1000 words, or 10% of the work, whichever is less; in the case of poetry, 250 words is the maximum permitted. It is generally understood that these restrictive guidelines might be unrealistic in a College classroom setting. Faculty may utilize their "fair-use" rights to make the necessary copies for students, but should not include the same article each semester without permission.
- the photocopying practices of the instructor should not have a detrimental impact on the market of the copyrighted work.

Music

The following fair use guidelines for the educational use of music were agreed upon by representatives from the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music and Ad Hoc Committee on Copyright Revision. Included are guidelines for copying both printed and recorded music materials:

- In an emergency, you can copy music to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course.
- 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.
- 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.
- 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.
- 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.

Illustrations, Photographs and Images of Art

Photographs and illustrations are more difficult to assess. Each photograph or illustration is a whole work and whole works don't pass the third fair use consideration, the factor evaluating the amount and substantiality of the portion used, to be considered. The generally agreed upon rules for including photographs and images of art in multimedia presentations are:

- use no more than 5 images from any one artist
- use no more than 10% or 15 images, whichever is lower, if the images are from a published collected work.

Audio and Visual Materials

Provided that the audio or visual materials are being displayed within an instructional setting as part of a college course and use a lawfully made copy, there are no restrictions. Even videos marked "for home use only" may be shown.

Copying Broadcasted Material for Classroom Presentation

Broadcasted programs can be recorded for classroom presentation, but the recording must be shown to students within a 10 day period (not including weekends and academic holidays). After the 10 day period has passed, the tape can be kept for another 35 days for faculty evaluation, but must then be erased or destroyed. All recordings must also include the broadcasted program's copyright.

Software

Commercial software licenses allow the purchaser to install the software onto one computer and to create one archive copy. License agreements included with the software package might give the purchaser more rights. Other software licenses include:

- shareware licenses, which allow free use of the software for a limited evaluation period.
- freeware licenses, which allow free use and permission to copy so long as it's not copied for profit.

Copying for Inclusion in Multimedia Presentations

Material under copyright can be collected and displayed by faculty and students in multimedia presentations for educational purposes. These presentations can be kept for up to two years after which permission must be obtained for the use of the materials. Portion limits for the types of materials used in the multimedia presentations are as follows:

- Motion media – 10% or 3 minutes, whichever is less.
- Text material – 10% or 1000 words, whichever is less; An entire poem of 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any one anthology may be used. For longer poems, you're only allowed 250 words.
- Music, lyrics and music video – Up to 10%, but in no event more than 30 seconds.
- Illustrations and photographs – No more than 5 images by an artist or a photographer, or no more than 10% or 15 images from a published collected work.
- Numerical data sets – Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or datatable.

Prohibitions that concern all copying:

- Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
- 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.
- Copying shall not:
 - substitute for the purchase of books, publishers' reprints or periodicals;
 - be directed by higher authority;
 - be repeated with respect to the same item by the same teacher from term to term.
- No charge shall be made to the student beyond the actual cost of the photocopying.
- Except in the case of emergencies, copying for the purpose of performance is prohibited.

Reserve Items

Faculty members and the library must share the responsibility for complying with copyright law for their reserve materials. Items that fall under fair use (see Fair Use section of this document) or items not covered by copyright (see Public Domain section of this document) may be placed on reserve without obtaining the permission of the copyright holder or paying copyright royalties. To ensure that material used for reserves meets the factors determining fair use, the following guidelines are followed:

General Guidelines

- All materials placed on print reserve or electronic reserve will be at the initiative of faculty and will be used for non-commercial, educational purposes by students.
- If the nature, scope, or extent of copying is judged by the library to exceed the reasonable limits of fair use, the faculty member must obtain permission or pay appropriate royalties in order to place copies of longer works (or substantial portions of longer works), such as complete books and performance scores on reserve.
- Permission must be obtained to place material on reserve on a repeated basis, i.e., for more than one course or in successive years for the same course.
- Access to the electronic reserves is limited by a password issued to students enrolled in a particular course.
- A copyright notice will be presented to students prior to accessing electronic reserve material indicating that the material is to be used “solely for the purposes of private study, scholarship, and research, and that any further reproduction of such materials by students, by printing or downloading, be limited to such purposes.”
- There is no charge for access to either print or electronic reserves.

If permission is required to copy material for reserves, the faculty member may directly seek permission from the copyright holder, or pay the necessary fees and royalties to the Copyright Clearance Center (www.copyright.com) for permission to use the material. More information concerning obtaining permission is available in the When Permission is Required section of this document.

The library will not place any items on either print or electronic reserve if it knows the material is not in compliance with copyright law. If you have any questions or concerns about reserve copyright compliance, please contact either Michael Beller (ext. 2051) or Clarence Maybee (ext. 2377).

When Permission is Required

Copyright Clearance Center (CCC)

Copyright Clearance Center (CCC) manages the rights to over 1.75 million works and represents more than 9,600 publishers and hundreds of thousands of authors and other creators. CCC offers “pay-per-use” services to get permission to copy and share content in paper and digital formats on an as-needed basis. For details please visit the CCC website at www.copyright.com.

Application to a Copyright Owner

Many publishers provide detailed information on their websites with instructions for requesting permission to copy material to which the publisher possesses the copyright. Therefore, it is a good idea to check a publisher’s site before initiating a request to use their material. Unless otherwise directed, send the request by mail to the publisher’s Copyrights and Permissions Department with a self-addressed envelope enclosed (see the Sample Permission Request Letter in the Appendix).

NOTE: Permission should be requested even for works which are out-of-print. You should not assume that out-of-print works by deceased authors are no longer protected by copyright.

Sample Permission Request Letter

Date

Copyright and Permissions Department
Publisher's Address

To whom it may concern:

I would like permission to copy the following article for class distribution/course anthology:

Author/Editor:

Translator:

Title of book or journal:

Edition and volume number of journal :

Copyright Date:

ISBN for books; ISSN for journals:

Pages (inclusive):

Number of copies to be made:

Enclosed is a self-addressed envelope. I appreciate your assistance.

Thank you.

Sincerely,

Faculty Member