

City University of New York
Copyright Guidelines for CUNY Libraries
(Prepared by the Copyright Task Force)

The Copyright Task Force was established in December 2001 at the request of the Council of Chief Librarians by the Council's Public Services Committee. The Task Force was charged with developing guidelines for copyright compliance for use by the CUNY libraries. This version represents the work that has been completed through July 9, 2003. The Task Force would like to thank the Copyright Committee at Brooklyn College for their valuable contributions to the sections *Course Reserves* and *Citation Guidelines*. The Task Force also thanks Jane Davis, from the CUNY Office of the General Counsel and Vice Chancellor for Legal Affairs, for her legal and editorial review and advice.

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I. MISSION STATEMENT

(Last revised 4/29/02)

This policy proposal for CUNY Libraries is regarded as a living document, a work-in-progress, subject to changes in United States copyright law and developments in information technology.

As librarians of the City University of New York, we are committed to our educational community's democratic right to equitable, unencumbered access to information in order to promote the free exchange of ideas.

As educators, we advocate the responsible application of fair use with regard to instructional materials. Ideally, we aspire to maintain a balance between educational fair use and the rights of owners and producers of intellectual property.

As stewards of the principles of copyright within academic research libraries, we view our role primarily as facilitators and liaisons to instructional faculty, staff and students to promote understanding and compliance. However, while knowledgeable about regulations, our contribution is largely advisory as we are not endowed with legal authority for rulings.

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II. FAIR USE AND THE LIBRARY EXEMPTION

(Last revised 5/19/03)

The [U.S. Copyright Act](#) grants copyright owners certain exclusive rights, including the rights to reproduce, perform, and distribute their works, as well as to make derivative works. These rights exist from the moment a work is created, whether or not a copyright notice appears on the work and whether or not the work is registered with the Copyright Office.

Some kinds of works are not protected by the copyright law. These include: facts and factual works; most U.S. government works; works that lack originality; works specifically put into the public domain by the owner of the copyright (such as freeware); and works in the public domain. Works published before 1923 are in the public domain. To determine whether works published after 1923 are in the public domain, see [chart](#).

These rules apply only to works published in the United States. Works created and/or published abroad will be subject to the relevant foreign laws. A good rule of thumb is to assume that the copyright law protects materials being used for educational purposes unless the materials are clearly in the public domain.

Copyright law does allow limited copying, distribution, display and performance of copyrighted works without the author's permission, under certain conditions. For libraries, two of the most important exceptions to a copyright owner's exclusive rights are fair use ([Section 107](#) of the Copyright Act) and the library exemption ([Section 108](#) of the Copyright Act).

Fair Use

The fair use provision of the Copyright Act provides as follows:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright.

In determining whether the use made of a work in any particular case is a fair use under Section 107, four factors need to be considered. A fair use analysis involves balancing the four factors. If the weight of the factors leans toward "favorable to fair use," then permission is not required. The four factors are:

- **The purpose and character of the use.** Teaching, scholarship, research, nonprofit, and transformative uses such as parody, criticism and commentary are all favorable to fair use. Uses intended to generate a commercial benefit are unfavorable to fair use.
- **The nature of the copyrighted work.** Fair use favors factual works over fiction and other highly creative works, unpublished works, and consumable materials such as workbooks and answer sheets.

- **The amount and substantiality of the portion used** in relation to the copyrighted work as a whole. Generally, the shorter the excerpt the more likely it will be fair use. However, the Copyright Act has no “percentage rule” defining what is an acceptable amount. The other factors will influence how much of a work may be used. For example, reproduction of an entire article may be a fair use if done for instructional purposes, and an unfair use if done for commercial benefit. In general, use only those amounts that are important to serving your educational purpose.
- **The effect of the use on the potential market for or value of the copyrighted work.** The fact that a work is out of print or unavailable, or that there is no ready market for permissions weighs toward favorable to fair use. On the other hand, a use that substitutes for the purchase of the work or use of the work in a course for multiple semesters is unfavorable to fair use. Limiting use of the work to a single semester and limiting access (e.g., adding passwords to course sites, limiting photocopies to the number of students in a class, erasing or disposing of materials at the semester’s end) help support a fair use claim.

The Library Exemption

Much of the copying covered by these Guidelines is permitted pursuant to Section 108 of the Copyright Act. To qualify for the Section 108 exemptions, libraries must meet three requirements set forth in Section 108(a):

- Copying must not be for direct or indirect commercial advantage.
- The collection must be open to the public or available to researchers doing research in a specialized field.
- Each copy reproduced must include the notice of copyright that appears on the original work or, if no such notice appears on the work, a legend stating that the work may be protected by copyright (e.g., "Notice: This material may be protected by the U.S. Copyright Act, Title 17").

Other important provisions of Section 108 are:

Section 108(b):	preservation copies
Section 108(c):	copies to replace damaged works or those in an obsolete format
Section 108(d):	single copies of articles for patrons or interlibrary loan
Section 108(e):	single copies of entire works for patrons or interlibrary loan
Section 108(f)(1) and (2):	patron use of reproduction equipment
Section 108(g):	interlibrary loan
Section (i):	limits on media covered by Section 108

III. Course Reserves

(Last revised 5/19/03)

- [General Procedures](#)
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Introduction

The collections of the City University of New York libraries are purchased for the nonprofit educational use of students, faculty and staff. All library materials are acquired with the understanding that there will be multiple uses of a limited number of copies. Libraries frequently pay a premium institutional subscription price per journal title, which is many times the individual subscription price, for the privilege of supporting multiple academic users. The purpose of course reserves is to facilitate access to materials in support of teaching, learning, and research.

Faculty may submit materials for course reserves that conform to the fair use provisions of the Copyright Act. See [Part II - Fair Use and the Library Exemption](#). Each CUNY library has the right not to accept materials if it judges that the nature, scope or extent of the material is beyond the reasonable limits of fair use, and will not knowingly accept materials that violate copyright law. Whether or not a use of materials for course reserves is a fair use depends on a variety of factors, including the nature of the materials placed on reserve and the length of time that materials are kept on reserve.

Where materials do not fall within fair use, they may still be placed on reserve provided permission is being sought from the copyright holder. If the faculty member has not already secured permission, the CUNY libraries will work to a reasonable extent to obtain copyright permission, insure that any reasonable publishers' fees are paid and post appropriate copyright notices. Seeking and obtaining copyright permissions may entail significant costs in fees and staff time. These costs may be covered by the faculty, library and/or other academic departments. Each CUNY library has the right to limit the number of items on reserve for a given course based on copyright constraints, staff resources, royalty costs, etc.

The electronic copying and scanning of copyright-protected works for course reserves are unsettled areas of the law which may be addressed by the Supreme Court or in future revisions of the copyright law. The libraries of City University of New York will monitor legal developments - which may affect the fair use analysis of electronic course reserves - to ensure that the library services are in compliance with the letter and spirit of U.S. copyright law. The CUNY libraries will monitor the evolving digital copyright policies and guidelines and will modify this policy as necessary.

General Procedures

1. Copyrighted materials placed on course reserves are for non-commercial educational use only. Access to electronic course reserves must be restricted to students enrolled in the course through passwords or other authentication methods.
2. All reserve copies must include any copyright notice (e.g., copyright © 2003 West Publishing) from the original, and appropriate citations or attributions to the source.
3. If there is no notice on the work, the library must add a legend stating that the work may be protected by copyright (e.g., “NOTICE: This material may be protected by copyright; further reproduction and distribution in violation of U.S. copyright law is prohibited.”)
4. Electronic course reserves must include the copyright notice or legend at the course level. A more strongly worded warning may be appropriate:

WARNING CONCERNING COPYRIGHT RESTRICTIONS

These materials are made available at this site for the education purposes of students enrolled in this class at XYZ College. This material [is protected by copyright: *list notice*] [may be protected by copyright]; further reproduction and distribution in violation of U.S. copyright law is prohibited.

5. Materials found not in compliance with copyright law, or for which copyright permission has been denied, will be removed from course reserves and the instructor will be notified.
6. All materials - including a chart, map, graph, diagram, drawing, cartoon or picture from a book, periodical, newspaper, CD, DVD or web site - must be submitted with full citation information, which is needed in obtaining copyright permission. ([See Part XII - Citation Guidelines.](#))
7. Where a faculty member has already received copyright clearance, evidence of the permission must be submitted.
8. Course reserves should not include any material unless the instructor, the library or another unit of the college possesses a lawfully obtained copy.
9. There will be no charge for viewing reserve materials, although printing charges may apply.
10. See also [Part VIII - Multimedia.](#)

Materials that DO NOT require copyright clearance

- Copyrighted articles available through electronic library subscription packages such as *EBSCO Academic Search Premier* or electronic journal subscriptions, when included in electronic course reserves as links to the articles on the vendor's server.
- Paper copies of material available through electronic library subscriptions, in accordance with licensing agreements.
- Copyrighted material on the Internet, such as organizational or institutional documents, full-length videos, CDs, DVDs and other resources, if included in electronic course reserves as links to the original sites.
- Public domain material, such as most government documents and material published before 1923. (See [chart](#) that describes when published and unpublished works go into the public domain).
- For physical course reserves, textual works (e.g., monographs, collected works, anthologies, etc.) and non-textual works (e.g., cassettes, videos, CDs, DVDs, etc.) that a faculty member or the library legally possesses (i.e., by purchase, license, fair use, etc.).
- A faculty member's own exams, homework solutions, and lecture notes.

Materials that SOMETIMES require copyright clearance

Some materials may be put on reserve for a single semester without permission from the copyright holder, or, they may be put on reserve for more than one semester *if* permission from the copyright holder is requested. These are:

- Single articles or chapters
- Several charts, graphs or illustrations in a work
- Other small parts of a work
- In accordance with licensing requirements, items that are available through electronic library subscriptions but do not have persistent URLs.

Materials that ALWAYS require copyright clearance

- These materials require permission from the copyright holder for *each semester* they are placed on reserve:
- Entire long works (e.g., monographs, collected works, anthologies, and non-textual works such as cassettes, videos, CDs, DVDs etc.) from the library's collection or the instructor's personal copies when placed on electronic course reserves.
- Multiple chapters from a single book, many articles from a single journal or anthology, or a large amount of any non-textual work.
- In accordance with licensing agreements, items that are available through electronic library subscriptions but do not have persistent URLs.
- A collection of works that could serve as a substitute for a published anthology of works by separate authors or a published collection of works by a single author.
- Scanned or photocopied workbooks, exercises, standardized tests, solution manuals and test booklets and other published consumable material.
- Student papers (students are the copyright holders of the papers or other works they produce).

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Appendix A: Sample Permission Letter for Course Reserves¹

Instructions

1. Check with publisher's web site for information about securing permission.
2. Call ahead to confirm the copyright ownership.
3. Include your return address, telephone number, fax number, and the date at the top of the letter.
4. Clearly state the name of your university and your position.
5. Describe the proposed use of the copyrighted material. If necessary or appropriate, attach a copy of the article, quotations, diagrams, pictures, and other materials. Your objectives are to eliminate any ambiguities and to be sure the permission encompasses the full scope of your needs.
6. The signature form at the end of the sample letter is appropriate when an individual grants the permission. When a company (such as a publishing house) is granting the permission, use the following signature format:

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

By: _____

Date: _____

Sample Letter

[letterhead stationery or return address]

[Date]

[Name & address of addressee]

Re: copyright permission request

[If you called first, begin your letter: This letter will confirm our recent telephone conversation.] I am [describe your position] at [name of institution] of the City University of New York. I would like your permission to [

_____ Place the cited material in our library's Electronic Course Reserves System in digital image format.¹ The class size is _____. I anticipate that copies will be placed on reserve for ____ semesters.

_____ Place cited material in the library's print course Reserves collection. The class size is _____ students. I anticipate that copies will be placed on reserve for _____ semesters.

[Insert full citation to the original work - see [Part XII](#) for examples]

Please indicate your approval of this permission by signing the letter where indicated below and returning it to me by fax as soon as possible. Your signing of this letter will also confirm that you are the sole owner [or your company is the sole owner] of the copyright in the above described material.

Thank you very much.

Sincerely,

[Your name, title and signature]

PERMISSION GRANTED FOR THE USE REQUESTED ABOVE:

[Type name of addressee below signature line]

Date:

¹Authorization is required for access. Materials are delivered free of charge. The material will be used for not-for-profit, educational purposes only. A copyright compliance statement appears prominently in the system.

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IV. Interlibrary Loan Services

(Last revised 5/19/03)

(Adapted from U. Texas "Copyright in the Library" series, by Georgia Harper)

Interlibrary Loan is a service through which library materials not available or owned in the college library may be requested for patrons from other libraries, either within or outside of CUNY.

Interlibrary Loan service policies and procedures at libraries of the City University of New York adhere to:

- Sections 107 and 108 of the U.S. Copyright Act
- the policies established by cooperative arrangements among local libraries
- the Interlibrary Loan Code for the United States (American Library Association)
- the CONTU Guidelines, developed by the National Commission on New Technological Uses of Copyrighted Works to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law.

The CONTU Guidelines only apply to certain materials (articles from periodicals published within five years of the date of the request and small parts of other works) and do not specify quantities of copying that would substitute for subscriptions to materials that are older than five (5) years or whole works under Section 108(e). The Guidelines suggest that copying requests for any given periodical (as opposed to any given issue of a periodical) be limited to five copies of an article or articles per year. Not counting toward the five permissible requests are items that a library owns and are currently unavailable (being bound, missing, etc.) or items for which the library has placed a subscription.

The library functions either as a borrower or lender. As a borrower, the library is responsible for compliance with the Copyright Act and, where applicable, the CONTU Guidelines. As a lender, the library is principally responsible for asking whether the borrowing institution has so complied.

Interlibrary loan may not be used to request books for placement on reserve. For items that are available in a library's full text resources, the interlibrary loan office should only notify the patron of the location.

The provisions of Section 108 and the CONTU Guidelines only cover interlibrary loans of textual materials and accompanying pictorial or graphic works, audiovisual works dealing with news, and non-musical audio works. For information about interlibrary loan of multimedia works, go to Part VIII - Multimedia.

Requesting a copy of an article from a journal issue or small part of another work.

As the borrower, the library must comply with Sections 108(d) & (g) of the Copyright Act and the CONTU Guidelines:

- The copy must become the property of the patron.
- The library must have no notice that the copy is for purposes other than private study, scholarship or research.
- The library must display and include on its order form a "Warning of Copyright."²
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material.
- The library must make its request with a representation that it has complied with the Copyright Act³ and the CONTU Guidelines, ⁴ as appropriate.
- Where copies of periodical articles exceed the CONTU "suggestion of five," the following fees may be incurred: royalties; document delivery fees; or the purchase of the entire periodical issue.⁵
- The library will maintain a record of requests for the current year and the three prior years.

Requesting a copy of an entire book

As a borrower, the library must comply with Sections 108(e) & (g) of the Copyright Act as follows:

- The library must determine that a copy cannot be obtained at a fair price.
- The copy must become the property of the patron.
- The library must have no notice that the copy is for purposes other than private study, scholarship or research.
- The library must display and include on its order form a "Warning of Copyright."
- The library must not be aware or have substantial reason to believe it is engaging in related or concerted reproduction or distribution of multiple copies of the same material.
- The library must make its request with an assurance that it has complied with the Copyright Act.

Requesting a copy of an entire journal issue

As a borrower, the library must comply with Sections 108(e) & (g) of the Copyright Act and the CONTU Guidelines:

- The library must meet all the requirements for requesting a copy of an entire book.
- The library must make its request with an assurance that it has complied with the Guidelines, as well as the Copyright Act, as appropriate.
- Where a copy exceeds the "suggestion of five," the following fees may be incurred: royalties; document delivery fees; or the purchase of the entire periodical issue.
- The library will maintain a record of requests for the current year and the three prior years.

Responding to a requests from another library

As a lender, a statement of compliance with the Copyright Act and the CONTU Guidelines, as appropriate, must be received from a borrowing library in order for a library to fill a request for a copy of one or more articles from a journal issue or a small part of a book. If the request is for an entire book, the lending library requires a statement of compliance with the Copyright Act.

The lender library must meet the Section 108(a) requirements, including placing a notice of copyright or legend on the copy.

Copies of print documents may be print or electronic. If the lender library creates an electronic copy by scanning the work or otherwise electronically transmits the copy (such as by fax), it must delete the scanned image or other temporary copy made incidental to the transmission.

License agreements may limit the ability of libraries to provide material. Most digital materials are subject to the terms of a licensing agreement. Lender libraries may provide copies of digital materials, either in print or electronically, unless prohibited by agreement. It is the responsibility of interlibrary loan office to be familiar with its library's licensing agreements.

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V. Reproduction Equipment and Services

(Last revised 5/19/03)

CUNY libraries that provide reproduction equipment and services for patrons need to be aware of and abide by the requirements of [Section 108](#) of the Copyright Act.

Not all media are covered by the reproduction rules of Section 108. Section 108(i) specifically excludes copying of musical, pictorial, graphic, sculptural and audiovisual works (other than news programs) from most of the rules. So, for example, if a patron requests a copy of a videotape of a musical performance, the library will have to look to the fair use provisions of Section 107 to determine whether the copy can be made. See [Section II - Fair Use and the Library Exemption](#) and [Section VIII - Multimedia](#) for additional information.

Reproduction Equipment

Reproducing equipment in libraries includes not only photocopiers but all equipment capable of making copies, such as computers, microform reader printers, VCRs, tape recorders, printers, scanners, and so on. Section 108(f) of the Copyright Act states that nothing in Section 108 can be used to impose liability for copyright infringement on a library or an archive or its employees for unsupervised use of reproducing equipment located on its premises, provided that all such equipment displays a notice stating that the making of a copy may be subject to the copyright law. The Act does not mandate any particular form of notice. The following language is suggested:

“The U.S. Copyright Act (Title 17 U.S. Code) governs the making of photocopies of copyrighted material. The person using this equipment is liable for any infringement of that law.”

Reproduction Services for Patrons

Single copies of printed works

Pursuant to Sections 108(d) and (e), a library or archive may make a single copy of an article or other contribution to a collective work, or an entire work, from its collection⁶ under the following conditions:

- The library must meet the [Section 108\(a\) requirements](#), including placing the notice of copyright or a legend on the copy.
- The copy must become the property of the patron.
- The library must have no notice that the copy is for purposes other than private study, scholarship, or research.
- The library must display and include on its order form a ["Warning of Copyright."](#)
- If the copy is of an entire work or a substantial part of it, the library must have determined that the work cannot be obtained at a fair price.

Copies may be print or electronic. If the library creates an electronic copy by scanning the work or otherwise electronically transmits the copy (such as by fax), it must delete the scanned image or other temporary copy made incidental to the transmission.

Single copies of digital works

Most digital works will be subject to the terms of a licensing agreement. Unless prohibited by the agreement, a library may print or download a copy of all or part of a digital work for a patron.

Multiple copies of works

Section 108 limits library reproduction for patrons to single copies. However, multiple copies may be considered fair use under Section 107 in certain instances.

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VI. Preservation Copying

(Last revised 5/19/03)

Preservation Copying

Under Section 108(b) of the Copyright Act, a library may make three copies or phonorecords of an unpublished work, duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives the collections of which are open to the public or available to persons doing research in a specialized field, provided that:

- The library meets the [Section 108\(a\) requirements](#), including placing the notice of copyright or a legend on the copy.
- The copy or phonorecord reproduced is currently in the collection.
- Any copy made in a digital format is not otherwise distributed in that format and is not made available to the public in a digital format outside of the library. *[NB: I deleted the citation to Crews. This language comes straight from the Copyright Act, not any analysis by Crews.]*

NOTE: The Section 108(i) limitations on media do not apply to preservation copies. Copies may be made of works in any media.

Damaged or Lost Works; Obsolete Formats

Under Section 108(c), a library or archives may also make three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format has become obsolete. The following requirements must be met:

- The library must meet the [Section 108\(a\) requirements](#), including placing the notice of copyright or a legend on the copy.
- The library or archives must make a reasonable effort to determine that an unused replacement cannot be obtained at a fair price
- Any copy made in a digital format may not be made available to the public in a digital format outside of the library.

A format is Aobsolete@ if the machine or device necessary to make the work perceptible is no longer manufactured or no longer reasonably available in the commercial marketplace.

NOTE: The Section 108(i) limitations on media do not apply to copies of damaged works or those in obsolete formats. Copies may be made of works in any media.

For additional discussion of this topic, go to [Part VIII - Multimedia](#).

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VII. Licensing Electronic Resources

(Last revised 5/19/03)

INTRODUCTION

The trend in university libraries is increasingly toward providing information to users in digital formats. Acquiring, accessing and maintaining digital materials differs from that of paper materials, and libraries must learn to prepare agreements that adequately address the provision of digital information to users in a timely, user-friendly, cost-effective manner.

Digital information is typically licensed from an information provider rather than purchased. The provider retains ownership of the information, but grants the library certain rights--of distribution, reproduction and/or performance--on terms that are set forth in a written agreement.

License agreements need to be carefully reviewed and negotiated. Some agreements may give the information provider rights and protections beyond those provided by the Copyright Act. Mass market software products may be governed by “shrinkwrap” licenses written on the product or its packaging or a “clickwrap” license posted at the download site. By accepting the license--by signing an agreement, breaking the seal on a product with a shrinkwrap license, or clicking to download a file--the user becomes contractually bound to the terms of the license.

Each CUNY library should designate one or more persons responsible for reading and evaluating license agreements prior to signing them. These staff should become familiar with standard licensing clauses and with preferred library language for these clauses.

In 1997 the American Association of Law Libraries, American Library Association, Association of Academic Health Sciences Libraries, Association of Research Libraries, Medical Library Association, and Special Libraries Association joined to develop a statement of “Principles of Licensing Electronic Resources” to guide libraries in negotiating license agreements for access to electronic resources, and to provide licensors with a sense of the issues of importance to libraries and their user communities in such negotiations.

The CUNY Libraries subscribe to the Principles for Licensing Electronic Resources.

ADVICE ON REVIEWING LICENSES

- Ask for a copy of the license during the initial contact with the information provider. Look for clauses that define how the product may be used by the library and its patrons.
- Review how common terms are defined in the license. Words like “Library,” “College” and “User” must be defined broadly enough to cover the library’s intended use.

- Licenses will typically include limitations on:
 - a user's right to copy, print, or download information from the database;
 - the number of simultaneous users, or the use of the product in local (LAN) and wide (WAN) area networks (If a system can accommodate multiple users extra costs are frequently involved.); and
 - the method of access, such as dial-up access or Internet.

When reviewing these clauses, consider the library's customary and expected use of the material, including whether the library needs the right to:

- make a digital copy to place on its own server for use in course reserves;
 - use digital materials to fill inter-library loan requests;
 - retain permanent use of the content or whether access for set period is sufficient; or
 - convert all or parts of the database to other media.
- The license should not restrict the library's rights under copyright law, including fair use.
- Review indemnification clauses very carefully. CUNY and its colleges should not agree to provide indemnification except in very limited circumstances involving negligence. The Office of General Counsel can give advice on specific clauses.
- Neither CUNY, the college nor the library should be held accountable for third party infringement.
- Licenses must be governed by New York state law.
- State and City purchasing laws must followed. Contracts over \$20,000 must be approved by the CUNY Board of Trustees. Be sure that the college individual signing the license has the authority to do so.

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VIII. Multimedia

(Last revised 5/19/03)

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This part primarily addresses the distribution and reproduction of electronic and digital media instructional materials. Multimedia materials can be combinations of data, text, still images, animations, moving images, and sounds. Multimedia materials are found on videotapes, audiotapes, laserdiscs and DVDs. Digitized multimedia materials may reside on floppy disks, CD-ROMs, digital tapes, as well as hard drives of networked computer servers and the World Wide Web.

General

1. The fact that an item does not bear a copyright notice does not mean that it is not protected by copyright. The Copyright Act does not require a notice. Libraries and patrons should assume that an item is protected by copyright unless they know otherwise.⁸
2. Section 110(1) of the Copyright Act permits faculty and students to perform or display works in any medium in a classroom or similar place of instruction in the course of face-to-face teaching. This means that faculty may, among other things, play music and show movies in the classroom as part of instruction, without permission from the copyright holder.
3. Section 110(2) covers the transmission of works to students not in the physical classroom, i.e. distance learning. It is much more restrictive than Section 110(1). If a use does not meet the requirements of Section 110(2), it may still be permitted under fair use. For more information on Section 110(2) and distance learning, see Part IX - Distance Learning.
4. Section 110 only covers performance and display. In order to make copies a library must look to the library exemptions and fair use. Not all media are covered by the library exemption rules of Section 108. Section 108(i) specifically excludes copying of musical, pictorial, graphic, sculptural and audiovisual works (other than news programs) from the rules, except for purposes of preservation or replacement. So, for example, if a patron requests a copy of a videotape of a musical performance, the library will have to look to the fair use provisions of Section 107 to determine whether the copy can be made.
5. The fair use provisions of the Copyright Act are intended to be technology neutral. Therefore, Section 107 may be applied to multimedia in a manner corresponding to print media.

Access

- Libraries and media centers should enter into licensing agreements with information providers to guarantee use of materials in classrooms and other educational settings. See Part VII - Licensing Electronic Resources for additional information.

- Multimedia materials in a library's collection are intended for educational use, not entertainment. Generally, materials do not circulate and must be used on the library premises or in the classroom. For guidelines regarding interlibrary loan, see below and Section IV - Interlibrary Loan Services.
- Materials may be borrowed by faculty and students for use in the course of face-to-face teaching.
- Faculty and staff may borrow materials for personal or home use to preview the material or otherwise for class preparation, with the understanding that unauthorized duplications are prohibited.
- Campus screenings of video materials for entertainment purposes are prohibited unless permission is obtained from the copyright owner. No admission may be charged for other campus screenings. Many music performances, including for concerts and dances, are permitted under CUNY's licenses with ASCAP and BMI.

Reproduction and Preservation

Many multimedia materials are governed by the terms of license agreements. Many of the following guidelines may be changed by agreement.

Software

- Copies of software cannot be installed on public service terminals. Copies may be made only as backup replacements.
- As permitted by licensing agreements, libraries may loan software, but only for temporary use - not for copying. If software is transferred to a hard disk, the program must be deleted when the borrowed item is returned.

Digitized Materials for Research and Class Assignments

- Segments of electronic and multimedia materials may be digitized (copied from analog to digital format) for instructional and scholarly purposes only.
- The copyright holder of each digitized segment must be clearly and prominently credited on or near the digitized material by displaying the copyright notice and appropriate citation information.
- Small segments may be manipulated for study and criticism purposes only. Alterations to original must be clearly stated.
- Permission must be sought to use digitized materials in works distributed beyond the original educational setting or with potential commercial value.
- Digitized materials may not be downloaded, retained, printed, shared, or modified, except as needed temporarily for specific academic assignments.

Video Recordings

- Complete works should not be duplicated except with written permission of the copyright holder or for preservation purposes or because the original format is obsolete. (See Section VI - Preservation Copying for additional information.)
- Digitizing is a form of duplication. Complete works should only be digitized for preservation purposes or because the original format is obsolete. Digitized copies must not be made available to public outside the library.
- The TEACH Act (see Section IX - Distance Learning) permits the creation of digital video clips (but not entire movies) for use in digital distance education so long as the work is not available digitally in a format free from technological protection. For example, if available DVDs of the work do not permit “ripping,” you can make a digital clip using an analog tape.

Audio Recordings

- Complete works may be duplicated without permission of the copyright holder only as follows:
 - pursuant to the TEACH Act (see Section IX - Distance Learning);
 - § 107 under fair use in limited circumstances (e.g., duplication of several short commercially recorded musical works in the library’s collection onto a single tape for use in audio reserves, in classroom exercises or examinations); and
 - § 108 for preservation purposes or because the original format is obsolete (see Section VI - Preservation Copying).
- Complete works may be digitized for preservation purposes or because the original format is obsolete. Digitized copies must not be made available to public outside the library.
- The TEACH Act permits the creation of digitized copies of audio recordings of complete non-dramatic literary and musical performances (e.g., poetry readings, concerts) and digital clips of audio recordings of dramatic literary and musical performance (e.g., plays, operas) for use in digital distance education so long as the work is not available digitally in a format free from technological protection. For example, if available CDs of the work do not permit “ripping,” you can make a digital clip using an analog tape.

Interlibrary Loan

- While CUNY campuses may exchange videotapes as part of the Instructional Media Consortium, libraries set individual policies for loaning outside the system.
- Audiovisual materials should be made available to requesting libraries, provided they are protected from loss and damage.
- High use, rare or items with special copyright or other legal restrictions prohibiting their circulation will ordinarily not be loaned.
- Digital copies of published or unpublished works must be used on the premises, and cannot be transmitted or otherwise loaned to outside users.

- Patrons will be informed that the U.S. copyright laws concerning issues such as duplication, exhibition and distribution must be strictly adhered to.
- The lending institution may stipulate any special copyright, viewing or handling conditions.

Off-Air Recordings

1. Broadcast programs may be taped off-air for non-commercial and face-to-face instruction under the following circumstances:
 - a. Program may be shown no more than twice (once in the course of relevant teaching activities and repeated once) over the ten school days following broadcast.
 - b. After 45 calendar days, the program must either be purchased, licensed, or the videotape erased.
 - c. Off-air programs may only be used over one semester.
2. A limited number of copies may be made from each off-air recording to meet legitimate instruction needs. All copies are subject to the same limitations as the original.
3. Off-air recordings must include the copyright notice from the original broadcast program.
4. Off-air recordings may not be electronically altered or combined into anthologies or compilations
5. Recording cable television programming may require permission.

The following documents may be consulted as resources:

* Guidelines for Instructional Use of Copyrighted Electronic and Multimedia Materials
<http://infoshare1.princeton.edu/reserves/libcitcopyright.html>

* Guidelines for the Interlibrary Loan of Audiovisual Formats
http://www.ala.org/Content/NavigationMenu/Our_Association/Round_Tables/VRT/Published_Guidelines/Guidelines_for_the_Interlibrary_Loan_of_Audio_Visual_Formats.htm

* PBS Fair Use Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes
http://pbs.org/teachersource/copyright/copyright_fairuse.shtm

* Fair Use Guidelines for Educational Multimedia
<http://www.utsystem.edu/ogc/intellectualproperty/ccmcguid.htm>

While these latter guidelines have been endorsed by the Consortium of College and University Media Centers (CCUMC), the American Library Association and Association of College and Research Libraries have not adopted them (specifically, due to objections over time and portion criteria). As a consequence, CUNY's Copyright Task Force recommends supporting the spirit - but not the letter - of them.

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IX. Distance Learning

(Last revised 5/19/03)

Distance education is a planned teaching and learning activity that employs a wide variety of technologies to reach learners at remote locations. Instruction may be synchronous or asynchronous. Distance education may utilize correspondence study, or audiovisual and computer technologies.

Under Section 110(1) of the Copyright Act, instructors and students may perform and display copyrighted materials in a classroom without securing permission from the copyright owner. Section 110(2), as recently revised by the Technology Education and Copyright Harmonization (TEACH) Act, covers transmission of these materials to students outside the physical classroom. The TEACH Act is complex and has many restrictions. Uses that do not meet these restrictions may still be permitted without permission of the copyright holder under fair use.

TEACH Act

A key point to remember is that the TEACH Act is intended to cover classroom-type instruction delivered digitally, including over the internet. It does not cover materials an instructor may want students to study, read, listen to or watch on their own time outside of class, including electronic reserves. For these uses, the instructor must continue to rely on the principals of fair use. (See [Section II - Fair Use and the Library Exemption](#), [Section III - Course Reserves](#), and [Section VIII - Multimedia](#) for additional information.)

1. Teachers and students may transmit (e.g., via the internet):
 - the performance of ALL of a non-dramatic literary or musical work (poetry & short story readings, all music other than opera, musicals and music videos)
 - REASONABLE AND LIMITED PORTIONS of any other performance (includes all audiovisual works, plays, opera, musicals and other dramatic musical works)
 - displays of any work in AMOUNTS COMPARABLE TO TYPICAL FACE-TO-FACE displays (includes photographs and other still images)
2. The TEACH Act does not cover or permit the use of:
 - works produced or marketed primarily for in-class use in the digital distance education market;
 - works the instructor knows or has reason to believe were not lawfully made or acquired; and
 - textbooks, course packs and other materials in any media typically purchased by students for their independent use.

3. The following additional conditions must be met:

- The performance or display must be:
 - A regular part of a systematic mediated instructional activity;
 - Made by, at the direction of, or under the supervision of the instructor;
 - Directly related and of material assistance to the teaching content; and
 - For and technologically limited to students enrolled in the class.
- CUNY must:
 - Have policies and provide information about, and give notice that the materials used may be protected by, copyright;
 - Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them;
 - Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

The following documents may be consulted as resources:

University of Texas System: The TEACH Act Finally Becomes Law

<http://www.utsystem.edu/ogc/IntellectualProperty/teachact.htm>

University of Wisconsin-Extension Distance Education Clearinghouse

<http://www.uwex.edu/disted/definition.html>

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X. Notes

¹From [Fair Use of Copyrighted Works: A Crucial Element in Educating America](#)

²Copyright Office regulations (37 CFR 201.14) require the following language:

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright laws of the United States (Title 17, *United State Code*) governs the making of photocopies and other reproductions of copyrighted materials.

Under certain conditions specified by law, libraries and archives are authorized to furnish a photocopy r reproduction.

One of these specific 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.

³To indicate compliance with the Copyright Act use ACCL@ when requesting photocopies. Only Copyright Act compliance is required if:

- The article is older than five years, OR
- Your library owns the journal title, OR
- This is the sixth or greater request within the calendar year and if your library is paying royalties to the Copyright Clearance Center or a document delivery vendor.

⁴To indicate compliance with the CONTU Guidelines, use ACCG@ when requesting a photocopy of an article from a journal if:

- The article is dated within the last five years, AND
- Your library does not own the journal title, AND
- This is the fifth or fewer request your library has made for this title within the current calendar year.

⁵If the requesting library has such a need for articles from that title, a subscription should be considered.

⁶See [Section IV - Interlibrary Loan Services](#) for information on requests that cannot be filled from the library's collection.

⁷Adapted from *Guide to Selecting and Acquiring CD-ROMS, Software, and Other Electronic Publications*. Chicago: American Library Association, 1994, pp. 24-25, and University of Arizona's Licensing Policy for selecting and Acquiring Electronic Products – Rev. May 30, 2000. APPENDIX C. Licensing (including site licenses)
<http://www.library.arizona.edu/library/teams/irdp/license.html>

⁸Works that are not covered by copyright law include, among other things, most government works, works that lack originality, freeware, and works published before 1923.

XI. Bibliography

(Last update, August 25, 2003)

Legal Sources:

[Digital Millennium Copyright Law 1998](#)

[U. S. Copyright Act](#)

U.S. Copyright Act. [Fair use provisions](#)

[Technology Education and Copyright Harmonization \(TEACH\) Act.](#)

Guidelines and other Cited Sources:

American Library Association . [National Interlibrary Loan Code.](#)

Association of Research Libraries. [Principles for licensing electronic resources.](#)

[Copyright Issues Related to Distance Learning and Multimedia](#)

Cornell University Library. "[Copyright Chart](#)". Describes when published and unpublished works enter the public domain.

Crews, Kenneth. **Copyright essentials for librarians and educators.** ALA, 2001

[Development:](#)

[Guidelines for Instructional Use of Copyrighted Electronic and Multimedia Materials](#)

[Guidelines for the Interlibrary Loan of Audiovisual Formats](#)

Harper, Georgia. **Licensing electronic resources: strategic and practical considerations for signing electronic information delivery agreements.** ARL, 1997.

Harper, Georgia. **Licensing electronic resources: strategic and practical considerations for signing electronic information delivery agreements.** ARL, 1997.

IFLA. Committee on Copyright and other Legal Matters (CLM). [Licensing Principles](#) (2000)

Indiana University. **Fair [Use Guidelines for Educational Multimedia.](#)**

John Jay College Online: [Intellectual Property, Copyright and Fair Use.](#) Bibliography of web sources.

[Liblicense-L](#) ; Includes free license maintenance software and a [model license agreement.](#)

National Commission on New Technological Uses of Copyrighted Works. [CONTU Guidelines.](#)

Developed to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law.

[Online book Page](#) (University of Pennsylvania Library)

PBS. [Fair Use Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes.](#)

Stanford University. [Copyright & Fair Use](#)

Talab, R.S. **Commonsense Copyright: A Guide to the New Technologies.** Jefferson, NC: McFarland, 1986.

University of Arizona. Library [Policy for Selecting and Acquiring Electronic Products.](#) June 30, 1996.

University of California Libraries. [Principles for Acquiring and Licensing Information in Digital Format.](#) A document that provides assistance in developing licensing policies.

University of Texas. [Copyright Law in the Electronic Environment](#)

Other Useful sources:

[Copyown: A Resource on Copyright Ownership for the Higher Education Community \(Univ. Maryland\)](#)

[Copyright for Music Librarians](#) (Music Library Association)

[Copyright Management Center](#) (Indiana University/Purdue University)

[Copyright Resources on the Internet](#) (New School Library)

[Search Copyright Records](#) (U.S. Library of Congress)

[U.S. Copyright Office](#) (Library of Congress)

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XII. Citation Guidelines

All items placed on reserves, whether printed materials, electronic documents or links to Web-based resources must include a complete citation. While *The MLA Handbook for Writers of Term Papers* ¹ was consulted as a starting point for guidance on the inclusion of elements for this document, adherence to this manual is not required. Please include as much of the following information as you can, using the reserve request form. As recommended in the *Handbook*, if some of the information cannot be found, cite what is available. While some of the information suggested below exceeds traditional citation parameters, providing the fullest amount of information may expedite obtaining copyright permission and/or processing material for electronic reserves. Most information for online sources can be obtained by right-clicking on the item.

Citation elements and examples are provided for textual and non-textual material in both their physical and digital manifestations.

[Books](#) -- [Articles or Chapters](#) -- [Non-Textual Material](#) -- [Videos](#)
[Work of art in a monograph](#) -- [Sound Recordings](#)

Citation Information: Books

Title, Author/Editor, Publisher, Place of Publication, Edition, Year

- *Additional Online Information includes -*

Online Vendor, Editor of Online Version, Year, Place, Date of Access, URL, Access Instructions if Needed, File Size, and File Format

SAMPLE BOOK CITATION

Author	Austen, Jane
Title	Emma, A Novel
Place of Publication	London
Publisher	Printed for J. Murray
Date	1850

SAMPLE ONLINE BOOK CITATION

Author	Austen, Jane
Title	Emma, A Novel
Place of Publication of Original	London
Date of Original	1815
Sponsoring Institution of Online Version	Electronic Text Center
Author/Editor of Online Project	David Seaman
Date of Online Version	1994

Place of Sponsoring Institution	Univ. of Va.
Date of Access	26 April 2002
URL	http://etext.lib.virginia.edu/toc/modeng/public/
Access Information	Free on the Internet. Commercial use prohibited. Usage governed by U of Virginia Library Electronic Text Center
File Size	1015 KB
File Format	TEI-conformant markup

Citation Information: Articles or Chapters

Article/Chapter Title, Article/Chapter Author, Source Title, Periodical Citation Data including Volume, Issue, Year and Pages OR Book Publication Information including Publisher, Place of Publication, Edition, Year and Pages.

- *Additional Online Information includes-*

Online Vendor, Editor of Online Version, Year, Place, Date of Access, URL, Access Instructions if Needed, File Size, and File Format, Citation, Information for Internet Links (as available), Page Title, Page Author, Site Title, Sponsor Name, Date of Creation, URL, Access Instructions if needed, and Date of Access

SAMPLE ARTICLE CITATION

Author	Evans, Beth
Title	The Authors of Academic Library Home Pages: Their Identity, Training and Dissemination of Web Construction Skills
Title of Journal	Internet Research
Volume Number	9
Issue Number	4
Date of Publication	1999
Page Numbers	309-19

SAMPLE INTERNET LINK TO ARTICLE

Author	Evans, Beth
Title	The Authors of Academic Library Home Pages: Their Identity, Training and Dissemination of Web Construction Skills
Title of Journal	Internet Research
Volume Number	9
Issue Number	4
Date of Publication	1999
Page Numbers	Emeral Fulltext
Publisher/Distributor	26 April 2002
Date of Access	309-19
URL	http://rosina.emeraldinsight.com/vl'20506370/cl'13/nw'1/fm'
Access Information	Access Restricted: Proxy or RPA Required
File Size	[if available]
File Format	HTML

SAMPLE ARTICLE SCANNED AS A PDF FILE

Author	Evans, Beth
Title	The Authors of Academic Library Home Pages: Their Identity, Training and Dissemination of Web Construction Skills
Title of Journal	Internet Research
Volume Number	9
Issue Number	4
Date of Publication	1999
Page Numbers	Emeral Fulltext
Publisher/Distributor	26 April 2002
Date of Access	309-19
URL	http://rosina.emeraldinsight.com/vl'20506370/cl'13/nw'1/fm'
Access Information	Access Restricted by Password
File Size	198k bytes
File Format	PDF

Citation Information: Selected Non-Textual Material

Videos

Title, Director, Writer, Performer, Producer, Original Release Year, Medium, Distributor, Year

- *Additional Online Information includes -*

Online Provider/Distributor, Year, Software Required, Date of Access, URL, Access Instructions if needed, File Size, and File Format

SAMPLE VIDEO CITATION

Title	Shakespeare in Love
Director	John Madden
Writers	Mark Norman, Tom Stoppard
Performers	Gwyneth Paltrow, Joseph Fiennes, Geoffrey Rush, Colin Firth, Ben Affleck, Judi Dench
Producers	David Parfitt, Donna Gigliotti, Harvey Weinstein, Edward Zwick, Marc Norman
Original Release Date	1998
Medium	DVD
Distributor	Miramax (distributed by Buena Vista Home Entertainment)
Date	1999

SAMPLE ONLINE VIDEO CITATION

Title	Shakespeare in Love
Director of Original	John Madden
Writers of Original	Mark Norman, Tom Stoppard
Performers	Gwyneth Paltrow, Joseph Fiennes, Geoffrey Rush, Colin Firth, Ben Affleck, Judi Dench
Original Producers	David Parfitt, Donna Gigliotti, Harvey Weinstein, Edward Zwick, Marc Norman
Original Release Date	1998
Distributor	E! Online
Copyright Date	1998
Software Required	RealPlayer

Date of Access	26 April 2002
URL	http://www.eonline.com/Shared/Eonline/Reviews/Movies/Clips/s/shakespeare_lov.ram
Access Information	Free on the Internet
File Size	26 Clip, 160x122, 2194 KB (37 seconds)
File Forma	RAM

Slide of a Work of Art

Title, Date of Original , Institution Housing Original, City, Collection, Author of Monograph, Place of Publication, Publisher, Year, Slide Number

- *Additional Information includes -*

Online Provider/Distributor, Year, Date of Access, URL, Access Instructions, Image Number, File Size, and File Format

SAMPLE CITATION FOR A SLIDE OF A WORK OF ART IN A MONOGRAPH

Author	Degas, Edgar
Title	Dancers at the Old Opera House
Date	1877
Institution	National Gallery of Art
City	Washington, D.C.
Collection	Degas Pastels
Author	Werner, Alfred
Place of Publication	New York
Publisher	Watson-Guption
Date	1998
Slide Number	22

SAMPLE CITATION FOR AN ONLINE SLIDE OF A WORK OF ART

Author	Degas, Edgar
Title	Dancers at the Old Opera House
Date of Original	1877
Institution Housing Original	National Gallery of Art
City of Above	Washington, D.C.
Collection	Degas Pastels
Date of Online Image	[if available]

Date of Access	26 April 2002
URL	http://www.abcgallery.com/D/degas/degas104.JPG
Access Information	Free on the Internet
Image Number	104?
File Size	25838 bytes (524 x 693 pixels)
File Format	JPG

Sound Recordings

Composer, Title, Performer, Format, Manufacturer, and Year

- *Additional Online Information includes -*

Year of Online Version, Software Required, Date of Access, URL, Access Instructions, File Size, and File Format

SAMPLE CITATION FOR 1st SOUND RECORDING OF A MUSICAL WORK

Composer	Schubert, Franz
Title	Fantasy in C Major, Op. 15: Wandererfantasie
Performer	Murray Perahia
Format	Compact Disc
Manufacturer	CBS(MK42124)
Date	1986

SAMPLE CITATION FOR ONLINE VERSION OF SAME RECORDING

Composer	Schubert, Franz
Title	Fantasy in C Major, Op. 15: Wandererfantasie
Performer	Murray Perahia
Format	Compact Disc
Manufacturer	CBS(MK42124)
Date of Original	1986
Date of Online Version	1986
Software Required	RealPlayer
Date of Access	NA
Page of URL	CBS(MK42124)