

Resolution 1998-15. Endorsing a Copyright Use Policy for Faculty, Staff, and Students.

The Faculty Council resolves:

The faculty of the University of North Carolina at Chapel Hill recommends adoption by the University of the following policy and further recommends that specific guidelines for implementation of the Copyright Use Policy be developed.

I. Introduction

The copyright law of the United States 17 U.S.C. § (101-1101) provides legal protection for works of original authorship that are fixed in tangible medium of expression. Copyright law protects the rights of the owners of copyrighted works from unauthorized reproduction, distribution, adaptation, performance and display. The Act provides for monetary damages for copyright owners who suffer losses from infringement of rights they have in protected work. Works eligible for copyright protection include works such as books, journal articles, musical and dramatic works, works of fine art, photographs, choreography, motion pictures, videotapes, sound recordings, and the like.

The University of North Carolina-Chapel Hill is committed to compliance with all applicable laws regarding intellectual property, including the copyright law, while encouraging the community to take full advantage of exceptions to the rights of the copyright owner, such as fair use. Where needed, guidelines will be developed by the University to assist faculty, students and staff in the implementation of these policies.

II. Fair Use

The most important exemption to the rights of the copyright holder is fair use. Fair use excuses uses of copyrighted works that ordinarily would be infringement. In order to determine whether a use is fair, the statute directs courts to consider certain factors such as: (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality used and (4) the effect on the potential market for or value of the work. Courts apply the factors on a case-by-case basis, and it is difficult to predict with certainty whether a particular use will be held to be a fair use.

Uses of works in nonprofit educational institutions are more likely to be fair use than are commercial uses. Although courts have often found educational uses to be fair, not all educational uses are so favored. The University of North Carolina at Chapel Hill encourages faculty to take full advantage of the fair use exemption, but to follow this policy and established University guidelines, and to consult legal counsel when in doubt about whether a planned use of a copyrighted work is likely to be a fair use.

III. Use of Copyrighted Works in Teaching

A. Providing Materials for the Classroom

1. *Distribution of materials to students*

Fair use permits instructors to use a wide range of copyrighted works to prepare for teaching. Faculty members may reproduce single copies of copyrighted works such as journal articles and the like to prepare for teaching. Copies of copyrighted works also may be reproduced for distribution to classes under fair use. The Guidelines on Multiple Copying for Classroom Use (Classroom Guidelines) reproduced in the House Report that accompanied the Copyright Act, state the general conditions for multiple copying for the classroom. UNC-CH complies with the Classroom Guidelines.

2. *Coursepacks*

Coursepacks consist of facsimiles of copyrighted articles, book chapters, etc., produced by a faculty member or at the request of a faculty member by a commercial or nonprofit copying service such as the campus bookstore and which are distributed or sold to students for profit or otherwise in lieu of a textbook or other materials. UNC-CH's policy is that production and sale of coursepacks is not fair use and that permissions to copy must be obtained from the copyright holder and royalties must be paid if requested. Although the two court decisions that have dealt with the commercial production of coursepacks for university courses were outside of this jurisdiction, UNC-CH has determined that coursepack production, even by the bookstore, cannot be interpreted as fair use.

3. *Placing copyrighted works on Webpages*

Placing copyrighted works, such as an article, a photograph or a graph, on a faculty Webpage constitutes multiple copying, and such activity cannot be used to avoid paying royalties. Faculty members should follow the Guidelines on Multiple Copying for Classroom Use when placing copyrighted works on a website and additionally restrict access to students enrolled in the class. For materials in excess of that permitted by the Guidelines, faculty must seek permission and pay royalties, if requested.

4. *Library reserves*

The UNC-CH Libraries' policies are based on the Model Policy of the American Library Association for placing photocopies of materials on library reserve at the request of faculty members. Materials placed on reserve may include either assigned or supplemental readings, but they should not comprise all or the major portion of the readings for the course. Faculty members may not substitute library reserves in lieu of coursepacks for which royalties should be paid.

Campus libraries may place materials on electronic reserves instead of reproducing photocopies. University libraries follow the existing ALA Model Policy for printed works as a model for establishing its own policies and guidelines for electronic reserve collections. Electronic reserves may include materials under the conditions detailed above and may not be used as a substitute

for a coursepack for which royalties should be paid. Additionally, access to electronic reserve materials is restricted to students enrolled for that class.

A. Software Use

Most software is governed by license agreements. Faculty and staff members may not make copies of copyrighted software unless such reproduction is permitted under the license agreement. Reproduction for student use or in the classroom is similarly restricted.

B. Performance and Display in the Classroom (the Classroom Exemption - § 110(1))

The University encourages its faculty and staff to take full advantage of the Copyright Act's classroom exemption governing the performance and display of copyrighted works in face-to-face teaching. Faculty and students are permitted to perform or display any work in the classroom, as long as the copy used is a legitimate copy. Classroom is broadly defined to include any location where instruction occurs, including a laboratory, lecture hall or the library. The performance or display must be for instruction and not for entertainment. The critical limitation is that of face-to-face teaching, which means simultaneous presence of teachers and students in the same place.

1. *Distance learning*

The face-to-face teaching exemption does not cover distance learning. Section 110(2) governs distance learning, and it is much more limited in both the works that may be performed and the location where instruction must occur. Although any work may be displayed, only nondramatic literary works or musical works may be performed. In order to use other works for distance learning courses, a license must be obtained. Even performances of nondramatic literary and musical works must be directly related and of material assistance to the teaching content of the course. Limitations on where instruction may be received restrict such reception to a classroom or similar place normally devoted to instruction.

UNC-CH has not yet developed a policy on the use of copyrighted materials in distance learning, but it takes note of the Proposed Distance Learning Guidelines developed by the Conference on Fair Use and pending federal legislation.

2. *Music performances*

Performances of music and other nondramatic literary works outside the classroom may be exempted under the Copyright Act if certain conditions are met. The performances must be nonprofit, there can be no payment of fees to performers, organizers or promoters and if there is an admission charge, it must go back for charitable purposes.

For performances of copyrighted music on campus that do not meet these requirements, the University pays annual license fees to the music performing rights societies such as the American Society of Composers, Authors and Publishers and Broadcast Music, Inc.

A. Development of Multimedia Works by Faculty

The University has not yet developed a policy on the use of copyrighted materials in multimedia works created by faculty. UNC-CH takes note of the Proposed Multimedia Guidelines developed by the Coalition of College and University Media Centers in conjunction with the Conference on Fair Use, but believes that the portion limitations are too restrictive.

B. Digitization of Visual Images

The University has not yet developed a policy on the reproduction of copyrighted visual images in digital form and their use. UNC-CH takes note of the Conference on Fair Use Proposed Guidelines on Digitization of Visual Images, but believes they are too restrictive for a university. UNC-CH has not yet developed its own policy.

I. Library Compliance with the Copyright Law

Section 108 of the Copyright Act covers reproduction by libraries and archives. Additionally, libraries have fair use rights. Campus libraries comply with the provisions and requirements imposed on libraries under the Act.

A. Preservation

Section 108(c) of the Copyright Act states that when unused copies of a work are available, in order to replace a lost, damaged, stolen or deteriorating work, a library will purchase such copy if it is available at a fair price. If an unused copy is not so available, the library may reproduce the work. UNC-CH libraries make every effort to preserve deteriorating materials in whatever form is appropriate. UNC-CH considers "facsimile form," as specified in the Act, to include a digital version when it is an exact reproduction of the page.

B. Reproduction for Users

Although University libraries generally do not copy for users, they may do so under the conditions detailed in the Copyright Act. The major limitations for libraries include that the request from the user be for one article only from a journal issue or other contribution to a collective work, that the copy become the property of the user and that the library provide the warning of copyright in accordance with the Register of Copyright's regulation.

1. *Interlibrary loan*

University libraries participate in for both interlibrary lending and borrowing activities and comply with the Interlibrary Loan Guidelines. Copies may be supplied or received in either analog or digital form. Generally, for interlibrary borrowing in excess of the Suggestion of Five, the libraries will pay royalties.

2. Document delivery

For copies exchanged within the UNC-CH campus, no records will be maintained or royalties paid. For copies obtained from other libraries (including TRLN libraries) University libraries comply with the Interlibrary Loan Guidelines Suggestion of Five.

A. Creating Digital Libraries

Most library digitization projects involve works within the public domain. Before digitizing copyrighted works that will be made generally available, such as by posting on a public Webserver, permission will be sought and royalties paid, if the copyright owner so requests.

Comment by the UNC-CH Copyright Committee

The University requires a set of basic principles with respect to use of copyrighted material to guide faculty and students. These principles should be broad in outline and recognize the ability of faculty to make good-faith decisions about particular circumstances. Through educational efforts the University should move toward common understandings of fair use for local needs, but detailed interpretations should not be part of the policy statement. This will allow the University to preserve the flexibility inherent in fair use law and preserve the opportunity to respond to a changing law and the changing demands of education and research. The proposed policy does not mandate particular decisions in particular cases but instead calls on each member of the University to be responsible for the fair use determinations with respect to the projects within his or her authority. The Office of Scholarly Communication and other offices will be available to assist with these determinations. Detailed guidelines (not rules) for implementation of the proposed Copyright Use Policy will be needed; development of these guidelines should be the responsibility of the Office of Scholarly Communication and should be undertaken in consultation with the proposed University Committee on Copyright and the University Legal Counsel