

## Summary of Copyright Law and Fair Use Provisions and

### Agreement on Guidelines for Classroom Copying

The following citations apply to intellectual property issues within higher education:

**Fair Use Guidelines-** Title 17, Section 107 US Code "Limitations on Exclusive Rights: Fair Use" and Circular 21, US Copyright Office "Reproduction of Copyrighted Works by Educators and Librarians"

**Electronic Issues-** Title 4, Digital Millennium Copyright Act, US Copyright Office

**Classroom Copying-** Trustee Policy Manual, Section 5.14- see below

### Summary of Copyright Law and Fair Use Provisions and Agreement on Guidelines for Classroom Copying

Section 107 of the *Federal Copyright Law Revision of 1973* provides that "fair use" of a copyrighted work, including use by reproduction in copies, for purposes such as "teaching (including multiple copies for classroom use), scholarship, or research, is *not* an infringement of copyright." The four statutory criteria used to determine whether the use made of work in any particular case in a fair use include:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational uses;
- (2) The nature of the copyrighted work;
- (3) The amount and substance 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.

An agreement between an Ad Hoc Committee and an author-publisher group entitled *An Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions* states the *minimums* that may be copied without infringement as to single copies for teachers, multiple classroom copies, and contains prohibitions applicable to both.

In summary, the agreement specifies that teachers may make single copies of these items: a chapter from a book; an article from a periodical or newspaper; a short story, essay, or poem; or a chart, picture, etc., may be copied. *Multiple copying for classroom use* cannot exceed the number of pupils in a class; must meet strict tests of *brevity*, *spontaneity*, and *noncumulative effect*; and must include a notice of copyright. *Brevity* is defined in strict and arbitrary volume terms; e.g., no more than 250 words from a poem, between 500-1000 words of prose but up to 2500 words of a complete article. *Spontaneity* requires teacher inspiration and time pressure that make it unreasonable to request permission. *Cumulative effect* limits copying by each instructor of a given item to only one course in the school, not more than nine instances of multiple copying for one course during one class term, and not more than one item from the same author nor three from the same collective work or periodical volume during one class term. Under the guidelines copies *may not*: 1) be used as substitute for anthologies, compilations or collective works; 2) be made of *consumables* such as workbooks; 3) be a substitute for purchases, be directed by higher authority, or be repeated with respect to the same item by the same teacher from term to term; or 4) be the subject of a charge to the student beyond actual copying cost.

Video taping of television programs for classroom use from *commercial television programming* should be tested by the above statutory criteria for fair use. Before video taping television programs for classroom use from a *public broadcasting agency*, the institution should contact the local public broadcasting station as to the list of programs which schools may record off-the-air.

Institutional employees desirous of using copies of material created by others are responsible for determining its copyright status and should obtain written permission from the copyright owner before using the material except when the "fair use" criteria stated above are met.