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Copyright Compliance Policy for Works in the Classroom and Library

The purpose of the Antioch College Copyright Compliance Policy: Library and Classroom is to provide a summary of U.S. copyright law as it relates to the use of text-based copyright-protected works in the classroom and library at Antioch College, and to provide guidelines and procedures for obtaining copyright permission to use these works. U.S. copyright law contains many gray areas, and the goal of this policy is to provide Antioch College administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers classroom issues such as photocopying, online and distance education, and course packs. It also covers library uses for print and electronic reserves, ILL and document delivery. This policy provides practical advice and procedures on copyright-related matters; however, it is not a substitute for legal advice, and proper legal advice should be obtained when necessary.

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1. WHAT IS COPYRIGHT?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act to this restriction. These are discussed below in the sections on “fair use” and “Photo copying in the library.” Permission is never

required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

WHAT IS PROTECTED BY COPYRIGHT?

The rights granted by the Copyright Act are intended to benefit “authors” of “original works of authorship.” Among the exclusive rights granted to those “authors” are the rights to reproduce, distribute, publicly perform and publicly display their works. Protected works include literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts’ and consultants’ reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright, provided that the term of copyright protection has not expired. When copyright protection has expired a work becomes “public domain” and is no longer protected by intellectual property laws – it is free to use without permission.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author’s life plus 70 years after the author’s death. This is often referred to as “life-plus-70.” Works created by companies or other types of organizations generally have a copyright term of 95 years. Works published or registered before 1923 are in the public domain.

For more information on copyright terms and duration, see <http://copyright.cornell.edu/resources/publicdomain.cfm>, or use the Digital Copyright Slider created by the American Library Association.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to “make a derivative work,” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art. Copyright law does not protect ideas, data or facts.

FAIR USE

Fair use is a section in copyright law that provides for uses of copyrighted works without the permission of the owner of the work. See Copyright Act, Section 107. Under the fair use provision, a reproduction of someone else’s copyright-protected work must be used for one of the following purposes: criticism, comment, news reporting, teaching,

scholarship and research. If the reproduction is for one of these purposes, a subsequent determination of fair use must be made based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

Fair use is an ambiguous concept. The law does not state exactly what uses of a copyrighted work will be considered fair uses. Decisions reached in court litigation often dictate the actual practice of the law. As such, individuals who are not copyright lawyers become interpreters of the law in everyday circumstances, and answers often remain unclear as to what kinds or how much reproduction may be considered fair use. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use. Examples are, but not limited to:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
- Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning's paper is directly relevant to that day's class topic. This would generally cover one time use in only one semester.
- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

If your use does not meet the above criteria and the work is protected by copyright, you probably need to obtain permission to use the work from the copyright holder or its agent.

2. TYPES OF USE

Classroom Handouts

Based on Antioch's fair use analysis, classroom handouts fall into two categories - one that requires permission and one that does not. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may use that work without obtaining permission. However, you must obtain copyright permission to use the work if the handout is planned in advance, is repeated from semester to semester, or involves works that have existed long enough that there is a reasonable amount of time to seek permission in advance.

Course packs

All articles, chapters and other individual works in any print or electronic course pack require copyright permission. Copyright permission for course packs is usually granted by the academic period. To reuse a course pack in subsequent academic periods (e.g.: semester, quarter, trimester, etc.), you probably need to obtain permission again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.

When ordering course packs it is important to clarify who will obtain permission for the course pack—is it the copy shop or reprographic center? Will it be the faculty member or a member of the administrative staff? Deferring responsibility for copyright permission will not provide protection against a claim of copyright infringement.

Reserves

If the Olive Kettering library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the library must obtain copyright permission.

3. PHOTOCOPYING IN THE LIBRARY

It is permissible to photocopy copyright-protected works in the Olive Kettering library without obtaining permission from the copyright owner, in the following circumstances:
Photocopying for Students, Faculty, and other Patrons

At the request of a library user or another library on behalf of a user, The Olive Kettering library may make reproductions of:

- An article from a periodical or small part of any other work
- An entire book or periodical on the condition that, after a reasonable investigation, an authorized reproduction cannot be obtained at a reasonable cost.

For the above reproductions the following criteria must be met:

- The library makes only one reproduction.
- The reproduction becomes the property of the library user.
- The library has no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- The library displays the register's notice at the place library users make their reproduction requests to the library.
- The library has no reason to suspect that the reproduction is systemic. For example, 20 students from the same class requesting a copy of the same article is evidence that the course instructor is avoiding obtaining permission.

Photocopying by Students

Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

Photocopying and Digital Reproduction for Library Use

Section 108 of the Copyright Act allows libraries to make photocopies and digital reproductions of works for specific uses and under the following conditions:

- Archival reproductions of unpublished works. Up to three reproductions of any unpublished work may be made for preservation, security, or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the Olive Kettering library must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
- Replacement of lost, damaged, or obsolete copies. The Olive Kettering library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)

4. COURSE MANAGEMENT SYSTEMS

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude universities, including Antioch College, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS). The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. You must obtain copyright permission if the use is planned, repeated, or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission.

5. COPYRIGHT AND FOREIGN WORKS

The U.S. is a member of the leading international copyright treaty, the Berne Convention. As such, when Antioch College User uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.). Copyright Clearance Center has many reciprocal licenses to allow use of materials from other countries.

6. HOW TO OBTAIN COPYRIGHT PERMISSION

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. The time to obtain permission may vary and it is recommended to start the permissions procedure at least six months prior to the time that you wish to use the materials. If you need a quicker permission, let the copyright owner know so that you may receive a quicker response.

Fact Finding Questions

Once you have determined that copyright permission is required for the material you want to use, you must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work.

The Copyright Office of the Library of Congress (www.loc.gov) may be of assistance in locating a copyright owner if the work is registered. Note, however, that since March 1, 1989 copyright is automatically granted to all works upon their being written down and that registration with the Copyright Office is not required.

There are two primary options for obtaining permission to use a work. You may contact the copyright holder directly or you may contact Copyright Clearance Center at www.copyright.com.

Information in your Permission Request

The copyright holder or its agent will require the following information in order to provide you with permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which you wish to reproduce the item
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

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