

**Southeast Missouri State University  
Copyright Manual**

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# Southwest Missouri State University Copyright Manual

## I. Purpose of Manual

Southwest Missouri State University (hereinafter referred to as “the University”) respects the rights of copyright holders and the copyright laws, and recognizes that in an electronic age copyrighted works are particularly vulnerable to misuse and unintended further distribution. The University’s Copyright Manual is predicated on the belief that accurate information about copyright encourages the proper use of copyrighted materials, eliminates common misconceptions, and reduces individual and institutional risk of copyright infringement.

The purpose of the University’s Copyright Manual is to provide a summary of U. S. Copyright law as it relates to the use of copyright-protected works in the classroom and library at the University, and to provide guidelines and procedures for obtaining copyright permissions to use these works.

This document describes the legal requirements and benefits of copyright compliance in order to be helpful to faculty, staff and students of the University. As such, it offers information and clarification about compliance with relevant portions of the United States Copyright Act, U.S.C. Title 17. Broadly, this manual:

- Outlines the foundations of copyright law relevant to the academic mission
- Promotes respect for the copyright holder’s rights
- Defines criteria and requirements for compliance with federal copyright law
- Informs the University community about beneficial and legal exemptions

U. S. copyright law contains many gray areas, and the goal of this manual is to provide Southwest administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This manual, however, is not a substitute for legal advice and proper legal advice should be obtained when necessary.

## II. Relationship to Existing Policies

The University’s Copyright Manual complements the University Information Technology and Network Systems Acceptable Use Policy and Procedures and the University Intellectual Property Policy.

## III. Scope of Manual

The University encourages all full or part-time faculty, students, staff and other users of resources provided by the University, including visiting researchers, visiting students, the university press, the university bookstore, and the general public, to abide by federal copyright laws relevant to the academic use of copyrighted materials.

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All members of the University community need to be aware that copyright infringement may have serious consequences, including significant personal liability for them. The University assumes no liability for, and is not obligated to defend, individuals who knowingly fail to comply with the copyright statutes, or any licenses for access to and use of others' copyrighted works. The University may terminate the network accounts of repeat infringers according to the provisions of 17 U.S.C. §1201 and may take other disciplinary action as deemed appropriate under the provisions of the University's Information Technology and Network Systems Acceptable Use Policy and Procedures.

### **IV. Copyright Defined**

Under Section 102 of the U. S. Copyright Act "original works of authorship fixed in any tangible medium of expression" are protected. This includes works in a variety of categories including: literary, musical, dramatic, artistic, and certain other intellectual creations. Copyright protection extends to both published and unpublished works, and extends to any US work.<sup>1</sup> Violation of any of the rights exclusive to copyright holders constitutes copyright infringement and can result in the awarding of significant damages to the copyright holder.

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<sup>1</sup> The "United States" refers to the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories under the jurisdiction of the US government. For the purposes of section 411, a work is a "US work" only if:

(a) Unpublished works. The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) Published works. The works specified by sections 102 and 103, when published, are subject to protection under this title if: (1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or (2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or (3) the work is a sound recording that was first fixed in a treaty party; or (4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or (5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or (6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation. USC Title 17, §104.

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Copyright law exists to balance the need to protect the rights of the copyright holders, while at the same time fostering intellectual activity and the creation and dissemination of new knowledge. The Copyright Statute, 17 U.S.C. §101 et seq. (effective date: 1978) implements this policy.

Copyright does not apply to facts, theories, ideas, mathematical equations, formulae, concepts, titles, systems, or processes, but works embodying such elements may be protected under copyright law if they show some minimal level of creative expression. Copyright only protects the expression of such content. Copyright does not apply to work attributed to the federal government, however, which can receive and does hold copyrights transferred to it by other parties. State and local government works may be subject to copyright.

### **V. Copyright Exclusive Rights and Exemptions**

Copyright holders retain the exclusive rights to reproduce, perform, distribute, translate and publicly display their original works. Therefore, someone wishing to use or reproduce even a limited portion of a copyrighted work needs to obtain written permission from the rights' holder or risk copyright infringement.

### **VI. Term Limits of Copyright Protection**

The duration of copyright protection depends largely on the date the work was created, though other factors may apply. A work by an author(s) is protected for a period based on the life of the author, or in the case of a joint project, the longest-lived author. Anonymous or pseudonymous works and works-for-hire are protected for a specific length of time. Once these terms expire the works pass into the "public domain." Be advised, though, that copyright holders and their heirs have the option to renew copyright so estimating a term based on the life of the author is not always an infallible formula for determining if copyright has expired on a given work.

#### **A. Using Works in the Public Domain**

Once works have entered the public domain, researchers have unrestricted access to their use. A work can enter the public domain once the term of copyright expires, or if the copyright holder places the work directly into the public domain. Common misconceptions about the public domain relate to works without copyright notices and the Internet. Many people assume that the absence of a copyright notice in a published work means that the work is in the public domain and use is unrestricted. This is incorrect (See "Copyright Notices"). Material posted to the Internet is also not in the public domain, and may also be protected by copyright. Always begin with the assumption that a work is copyrighted and work from that point towards determining if, in fact, this is true, and who holds copyright.

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Some works are created in the public domain, primarily U. S. government publications, which carry no copyright. This exemption applies only to federal works, not state or local government publications. Additionally, publications funded by the federal government, but created by someone hired to do the work (e.g., grants, contracts), or to published, edited, annotated, or compiled indexes or sets of federal government documents, may be copyrighted.

When ownership of a work is clear, the following chart “When Works Pass into the Public Domain” aids in determining copyright status:

### WHEN WORKS PASS INTO THE PUBLIC DOMAIN<sup>2</sup>

Date of Work	Protected From . . .	Term of Protection
Created January 1, 1978 or later	When work is fixed in a tangible medium or expression	Life + 70 years. <sup>3</sup> If work is of corporate authorship, the shorter of 95 years from publication, or 120 years from creation. <sup>4</sup>
Published before 1923.	Now is in public domain.	None, expired.
Published from 1923-1963	When published with notice. <sup>5</sup>	28 years + possibility of renewal for 67 years. If not renewed, is in the public domain.
Published 1964-1977	When published with notice	28 years for 1 <sup>st</sup> term + automatic renewal for 67 years.
Created before January 1, 1978, but not published	January 1, 1978, the effective date of the Copyright Act, which eliminate common law copyright	Life + 70 years, or December 31, 2002, whichever is greater
Created before January 1, 1978, but published between then and December 21, 2002	January 1, 1978, the effective date of the Copyright Act, which eliminated common law copyright	Life + 70 years or December 31, 2002, whichever is greater

## VII. Copyright Exemption

### A. The Fair Use Doctrine

The most important exemption to the U. S. Copyright Act is Section 107, or the section pertaining to “Fair Use.” For scholarly and educational uses, reasonable portions of a copyrighted work may be used

<sup>2</sup> Created by and used with permission from Laura (Lolly) N. Gasaway, Associate Dean for Academic Affairs and Professor of Law, University of North Carolina, Chapel Hill.

<sup>3</sup> Term of joint work is measured by the life of longest-lived author.

<sup>4</sup> Also works for hire, anonymous, and pseudonymous works. 17 U. S.C. §302 (c).

<sup>5</sup> Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between January 1, 1978 and March 1, 1989, effective date of the Berne Convention Implementation Act, retained copyright only if e.g., registration was made within 5 years. 17 U. S.C. §405.

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without seeking the permission of the copyright holder, which is known as “fair use.” Permission from the copyright holder may not be required if the use pertains to scholarship, teaching, criticism, commentary, research, or news reporting.

Section 107 provides four criteria to consider in determining whether or not a use is “fair,” and does not require permission from the copyright holder. These four factors are: (1) the purpose and character of the use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the work to be used; and (4) the effect on the potential market or value of the work. A “Fair Use” checklist is provided in Appendix A.

Through the exemptions provided in Section 107, educators may distribute portions of copyrighted works to their classes; post artwork to password restricted class websites; and make single-use photocopies for research purposes. You should not assume that you are exempt from copyright laws, however, because your use is scholarly or educational. Your use must pass the four factor test; and while any one single factor may not lend itself to fair use, the combined analysis of other four factors may lead to a fair use determination.

With regard to past litigation regarding “Fair Use” disputes some generalizations can be made.

- **Purpose and character of the use**
  - Nonprofit, educational uses are favored over commercial uses
  - Transformative works, or those that build on previous intellectual or creative endeavors, are favored over mere reproductions
- **Nature of work used**
  - Published works are favored over unpublished
  - Published works of nonfiction are preferred over fiction
  - Printed works are favored over commercial audiovisual works
  - Consumable works (standard tests, work books) have no fair use
- **Amount and substantiality of portion used**
  - Small portions (unless they constitute the heart of the work) are favored over large portions
  - Thumbnail, low-resolution images are favored over full-size images
- **Effect on potential market or value of work**
  - Use favored if sales, value or potential sale is not harmed

Publishers can also exempt educational uses of copyrighted works, but such exemptions must be stated within the materials. This commonly occurs within “Acceptable Use” policies noted on electronic databases and journals, or that are present on websites.



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### VIII. Technology and Copyright

While advances in technology have made it easy to create new works and integrate a variety of media into one project, technological advances have also made it easier to misuse copyrighted material on a wider scale. The display and/or distribution of exact copies of copyrighted material or derivative works without the permission of the copyright holder constitutes copyright infringement. Recent changes in copyright law have attempted to address technological change and the risks involved. The Digital Millennium Copyright Act (DMCA) and the Technology, Education, and Copyright Harmonization (TEACH) Act are two pieces of legislation that expand copyright protection to digital content, while establishing guidelines that allow educators to use copyrighted material when very specific procedures are observed. The DMCA, in particular, places particular responsibility on the University, as an Online Service Provider, to observe strict enforcement of copyright compliance.

#### A. Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA), passed in 1998, recognized copyright protection for digital creations. The DMCA has two key points: anti-circumvention prohibitions and the protection of copyright management information (CMI). Under the DMCA, media may now be subject to technological protection measures (TPM), such as passwords or encryption, which control access to the copyrighted work. The unauthorized circumvention of the technological measures that control access to or restrict the use of a copyright-protected work (e.g., breaking a password or encryption) is illegal, as is the trafficking of anti-circumvention measures.

The DMCA also protects the copyright management information (CMI) included on a copyrighted work. This information includes: electronic copyright notice, name of an author or copyright owner, title of a work or anyone credited on a work. Removal or alteration of CMI from a work is prohibited. When uploading a copyrighted work onto a network, all CMI that appears on the original work must be included.

**1. Online Service Provider (OSP) Responsibilities.** Under the broad definition of Online Service Provider (OSP) established by the DMCA, the University network has only limited liability for the actions of its users, providing certain requirements are met. These requirements are:

- Appoint a designated agent to receive reports of copyright infringement; register agent with the U. S. Copyright Office;
- “Adopt and reasonably implement and inform” system users that policies are in place regarding appropriate use of the network<sup>6</sup>;
- Comply with “take-down” requests from copyright holders or their agents regarding infringing material on the University network<sup>7</sup>;

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<sup>6</sup> The University, under the provisions of the DMCA, is also required to terminate the system privileges of repeat infringers.

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- Protect against the unauthorized access to content and dissemination of information through the adoption of new measures or the observation of TPM already in place;
- Use only lawfully acquired copies of copyrighted works

By meeting these requirements, the University is subject only to contributory infringement penalties when its users infringe upon others' copyrights.

The DMCA has received criticism as being overly broad and not conducive to the "progress of science and the useful arts." There are several exemptions to the DMCA regulations, but are narrow in their application. These exemptions are listed in Appendix II of this manual.

### **B. Copyright and Distance Education**

**1. The TEACH Act.** The 2002 Technology, Education, and Copyright Harmonization (TEACH) Act was adopted to address copyright issues involved in distance education. According to one copyright expert, the TEACH Act is a compromise between the maximum protection demanded by copyright holders and the liberal use rights desired by educators.<sup>8</sup> Institutional commitment to ensure proper use under the 2002 TEACH Act is a large factor behind the institution's ability to expand the use of copyrighted material. In terms of software, oversight, and other legal obligations, the institution is held accountable for enforcement in the use of copyrighted material. Therefore, only a small percentage of higher education institutions have adopted the TEACH Act.

### **C. Using Copyrighted Works – Seeking Permission**

When your use of a copyrighted work does not meet the standards of "fair use" or other educational exemptions, you are required to seek the permission of the copyright holder. Permission should also be obtained from the copyright holder in writing. The copyright holder may or may not be the author or publisher identified in the work. Copyright holders generally may be located through the U. S. Copyright Office, the Copyright Clearance Center, through publishers' rights departments, and through various academic directories and databases.

In order to obtain permission, contact the copyright holder in writing. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:

- Title, author and/or editor of materials to be duplicated

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<sup>7</sup> Southeast Missouri State University is not liable for monetary relief or for injunctive relief for a user's infringement of copyright, provided the University does not have actual knowledge of infringement, receives no financial benefit from it, and upon receipt of proper notification of a claimed infringement, acts expeditiously to remove material or disable access to the infringing material, §512(c)(1)(C) and §512(g).

<sup>8</sup> Kenneth Crews, Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions (Chicago: American Library Association, 2006), 68.

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- Exact material to be used, amount to be duplicated (e.g., page numbers, chapter), and if possible, a photocopy of the material.
- Number of copies to be made
- Use to be made of duplicated materials
- Form of distribution (classroom, newsletter, etc.)
- If the material will be sold
- Type of reprint

The request should be sent, along with a self-addressed stamped return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled *The Writer's Market*, published by Writer's Digest and available in Kent Library's Reference Collection. The process of granting permissions requires time for the publisher to check the status of the copyright and to evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission. If you do not receive a response, this is not permission to proceed. In the case of copyright, no response is the same as a negative response. Also simply acknowledging or citing the source of content is not a substitute for copyright permission.

If copyright ownership is unclear (e.g., anonymous works, unpublished (archival) material), an attempt to document copyright may provide a good-faith defense in the event of litigation; but it is not a shield from liability for copyright infringement. When copyright is unclear or in doubt, consult a copyright clearinghouse for assistance.

The Copyright Clearance Center (CCC), a commercial clearinghouse, also has the right to grant permission and collect fees for photocopying rights for certain publications. Libraries may copy from any journal that is registered with the CCC and report the copying beyond fair use to the CCC and pay the set fee. A list of publications for which the CCC handles fees and permissions is available from the Copyright Clearance Center, 27 Congress Street, New Salem, MA 01970.

### **IX. Copyright Registration**

Copyright is automatic and awarded to any work "fixed in a tangible medium of expression," and does not require registration with the United States Copyright Office. Registering your work with the Copyright Office, which involves completing a form and paying a fee, does offer some benefits to the copyright holder. In the event of an infringement, copyright registration establishes a public record of the owner's claim to copyright, and provides necessary support for litigation. For access to copyright registration forms, visit: <http://www.copyright.gov/register/>. Additional information on the registration of copyright is available in the University's Intellectual Property Policy.

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### X. Copyright Notices

Prior to January 1, 1978, all copyrighted works were required to bear a copyright notice identifying the copyright holder and the date of first publication (e.g., © 2008 Southeast Missouri State University). Works published without a notice immediately entered the public domain.<sup>9</sup> As of March 1, 1989, as a result of the Berne Convention, an international conference on copyright law, Congress removed all formalities, including notices and registration, as conditions of copyright protection.

When a work bears a copyright notice, it is much more difficult for an alleged infringer to claim innocent infringement. Ignorance of whether a work is protected by copyright is no defense against a claim of infringement. The burden is on the user to determine if he or she is acting lawfully.

### XI. Using Copyright Materials

#### A. Computer software

Computer software falls under copyright law and is also subject to licensing agreements. Copying software for the purposes of resale or sharing constitutes piracy and is punishable by a fine and/or imprisonment.

1. **Single Copy.** Users must observe licensing agreements with regard to the number of computers on which a single program may run simultaneously. Copying to an internal hard drive for purposes of installation is permitted, as is the creation of one backup copy of the original software. Some software vendors permit a copy to be made for home or portable use, provided that the two copies are not used simultaneously. Some software is in the public domain and may be used without seeking permission. Free software, available over the Internet and downloaded from file transfer servers (ftp) is protected by copyright, but the owner makes it available at no charge. Such software can be copied, used, or incorporated into new software provided that proper attribution is given, and that any new software incorporating free software, is not sold without the permission of all the owners of any embedded code.
2. **Network version.** Copying software from the University network is prohibited.
3. **Site License.** The University controls site-licensed software. Users must observe licensing agreements with regard to the number of computers on which a program may run simultaneously. Copying site-licensed software for purposes other than creating an archive copy is unlawful.

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<sup>9</sup> Congress allowed a copyright holder to remedy an omitted or defective notice between 1978 and 1989. Therefore, the absence of a copyright notice in a 1980s book does not reliably identify a book as in the public domain. Kenneth Crews, *Copyright Law for Educators and Librarians: Creative Strategies and Practical Solutions* (Chicago: American Library Association, 2006), 17.

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The University does not condone any use of software on its network that is contrary to law or the license agreement applicable to the software. Violations of the University's Information Technology Policy may result in civil or criminal action against the offender and may result in loss of network privileges.

### **B. Coursepacks**

Coursepacks, or collections of magazine, newspaper, or journal articles, book excerpts, and other materials selected by a course instructor for distribution to students as required or supplemental readings, require permission from the copyright holders or their agents. At the University, the Bookstore receives the requisitions for the printing and duplicating of coursepack materials, which will ultimately be sold in the Bookstore. The Bookstore reviews the materials for copyright and seeks permission to reproduce the materials by obtaining authorization from the publisher(s). The publisher(s) grants permission to the Bookstore. Copyright fees vary with the publisher(s). Response times vary from immediate to 3 months. Instructors are encouraged to plan ahead. Original copies are then produced into coursepacks. Copyright acknowledgement is included as required by the publisher(s). Copyright permissions for coursepacks are usually granted only for the duration of one semester. To reuse a coursepack in a subsequent semester, copyrights must be renewed. The Bookstore cannot assume permission granted to an Instructor. Permissions must be negotiated and assigned to the Bookstore. Coursepacket requisition forms can be obtained from the University Bookstore, or by calling ext. 2526.

### **C. Digital Content**

Digital or electronic content, such as electronic databases, websites, e-books, and electronic communications (e.g., e-mail, internet postings, intranet postings), are subject to the same protections under the Copyright Act as print, analog and visual works. In addition, the Digital Millennium Copyright Act (DMCA), adopted in 1998, extends special protections to digital content.

One common misconception is that websites and their content are not subject to copyright law, and can be used freely and modified without permission. This is an incorrect assumption. As with print material, digital content need not bear a notice of copyright to be protected. Any material that is copyright protected in a non-digital format is protected in a digital form. Examples include:

- Musical recordings
- Books and articles
- Photographs
- Correspondence

1. **Licensed electronic resources.** Access, use and reproduction of the University's licensed electronic resources, such as library databases, are governed by contractual licensing agreements and U. S. Copyright Law. Use of electronic resources must also be in compliance

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with the campus-wide Information Technology and Network Systems Acceptable Use Policy and Procedures. Users of licensed library resources must comply with the terms of agreements and be aware that the publishers may monitor use of electronic resources to ensure that the terms of their licensing agreements are enforced. Breach of license may lead a publisher/vendor to turn off the University's access without warning. In using licensed e-resources, users must:

- Limit uses to non-commercial, educational, or personal research purposes;
- Not facilitate unauthorized access by others (i.e., do not share your Southeast ID)

Acceptable Uses	Prohibited Uses
Print/download/quote limited amounts of information (with proper attribution)	Download all articles in an e-journal or all chapters in an e-book; download substantial portions from a database to create another collection of data
Email an article to another current Southeast faculty, student or staff (unless expressly forbidden by licensing agreement)	Email an article to a person not affiliated with the University (unless permitted in the licensing agreement)
Create a link to a journal article on a publisher's website	Post a copy of an article to a University server

The electronic environment has made it easier to re-use copyrighted works; but the user must exercise caution to ensure those uses are lawful ones. Some examples of the use of digital content that observes copyright protections are:

- **Digitization.** Creating a reproduction of an original work by means of scanning or digitizing requires permission from the copyright holder(s), unless the item or object is in the public domain.
- **Using content from a website.** Before using any content from a website, you should determine the copyright status and, if necessary, obtain permission from the copyright holder(s).
- **Posting content to a website.** Posting copyright-protected content on any website, even your own personal webpage, requires permission from the copyright holder(s).
- **Forwarding email.** The copyright holder of an email is the author of the email. The copyright in an email attachment belongs to the author of the attachment. Before forwarding an email or an email attachment, you should obtain permission from the copyright holder(s).
- **Linking to a website.** A link on a website lets you click and connect to another area of the same site or to a different site. A link from your site to another website (especially to a page other than your homepage) may require the consent of the website's owner. U. S. law is not clear on this issue. In an effort to be safe, many organizations only link their own sites to the public home pages of other websites. To ensure compliance, obtain permission even to link to another website's home page.
- **Electronic Discussion Lists, Bulletin Boards, and Newsgroups.** Copyright law protects all types of electronic discussions, including messages that appear in your email inbox or ones that you access from a website or computer network. You should not reproduce or forward any

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comments from any electronic discussion list, bulletin board, or newsgroup without the permission of the copyright holder.

### **D. Dramatic Works**

Under Section 107 of the U.S. Copyright Act (“Fair Use”), copying of dramatic works or plays is permissible for legitimate educational purposes. A single copy of an entire performable unit (e.g., scene, act, etc.) that is out-of-print or unavailable except in a larger work may be made by or for an instructor for the purpose of research or class preparation. Copying dramatic works for performance is prohibited by copyright unless (a) the work is in the public domain or (b) the copies are required for an imminent performance, and will be destroyed as soon as purchased replacement copies can be substituted. Purchased printed copies may be edited, provided that the fundamental nature of the work is not distorted. Dramatic works should not be reproduced without inclusion of relevant copyright notices.

### **E. Government publications**

US government publications, which are documents prepared by an official or employee of the government in an official capacity, are not subject to copyright, and may be photocopied freely.<sup>10</sup> Examples of government publications include congressional reports, court opinions, statutes and many other types. Contracts, grants, and other works created by government contractors may not be exempt from copyright protection. In the absence of a copyright notice, it is reasonable to assume that the work is in the public domain. State and local government works may be protected by copyright; but the opinions of state courts are not protected by copyright.

### **F. Literary Works**

**1. Single Use Photocopies.** Instructors may make a single copy of any of the following for scholarly research or use in teaching or in preparing to teach a class:

- A chapter from a book
- An article from a periodical or newspaper
- A short story, short essay, or short poem, whether or not from a collective work
- A chart, diagram, graph, drawing, cartoon, or picture from a book, periodical or newspaper
- Liner notes or libretti from a sound recording

These examples reflect the most conservative guidelines for fair use. They do not represent maximum limits for the amount of copyrighted material that can be photocopied within the boundaries of fair use. When exceeding these minimum levels, however, one should consider the four factors of fair use. In some scenarios increased levels of photocopying would continue to remain within the scope of fair use:

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<sup>10</sup> US government publications may reproduce copyrighted content, which still requires the permission of the copyright holder(s) to reproduce, §101 and §105.

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- The inability to obtain another copy of the work because it is unavailable from another library or source and cannot be obtained when needed
- The intention to photocopy the material only once and not distribute the material to others
- The ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater the amount that may be photocopied)

Most single-copy photocopying for personal use in research, even when it involves a substantial portion of a work, may well constitute fair use.

**2. Classroom Use.** An instructor may distribute photocopied material to students in a class without prior permission from the copyright holder(s) under the following conditions:

- The same photocopied material is not distributed each semester
- Only one copy is distributed to each student and this copy becomes the student's property
- The photocopied material includes a copyright notice on the first page
- The students are not assessed any fee beyond the actual photocopying charges

In addition, the amount of photocopying must meet certain brevity standards so as not to have a detrimental impact on the market for the copyrighted work.<sup>11</sup> To guard against such an outcome, an instructor usually should restrict use of a photocopied item to one course and should not repeatedly photocopy excerpts from one publication or one author without seeking permission.

**3. Library Reserve Uses.** See **Copyright Compliance Issues – Library Reserves, Print and Electronic.**

**4. Uncopyrighted Published Works.** Writings published before January 1, 1978, which have never been copyrighted may be photocopied without restriction.

**5. Photocopying Requiring Permission.** Copyright law applies to all forms of photocopying, whether undertaken at a commercial copying center like Staples or Kinko's, at departmental facilities, or at library self-service machines. Permission is necessary when copying in the following situations:

- **Repetitive copying.** The classroom or Reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright.<sup>12</sup>
- **Copying for profit.** Faculty should not charge students more than the actual cost of photocopying the material.<sup>13</sup>
- **Consumable works.** The duplication of works that are consumed in the classroom, such as standardized tests, exercises and workbooks, normally requires permission from the copyright owner.<sup>14</sup>

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<sup>11</sup> A prose work may be reproduced in its entirety if it is less than 2,500 words in length. If the work exceeds such length, the excerpt may not exceed 1,000 words, or 10 percent of the work, whichever is less. In the case of poetry, 250 words is the maximum amount that can be copied. 17 U.S.C. §107(4) and *Basic Books, Inc., et al, Plaintiffs v. Kinko's Graphics Corporation, Defendant* [758 F. Supp. 1522 (S.D.N.Y. 1991)].

<sup>12</sup> §107(3).

<sup>13</sup> §107(1).



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- **Creation of anthologies as basic text material for a course.** Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. Such photocopying is likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use.<sup>15</sup>

**6. Obtaining Permissions.** See **Using Copyrighted Works – Seeking Permissions.**

### **G. Musical scores**

Section 107 of the U. S. Copyright Act (“Fair Use”) permits the photocopying of musical scores, including lyrics, for legitimate educational purposes. Single or multiple copies of excerpts of works may be made, provided that the excerpts do not constitute a performable unit (e.g., aria, movement), and in no case shall be more than 10% of the work. The number of copies for classroom instruction should not exceed one copy per student. A single copy of an entire performable unit may be made solely for the purpose of research or class preparation if the work is out-of-print or unavailable except in a larger work. Copying musical works for performance is prohibited by copyright unless (a) the work is in the public domain or (b) the copies are required for an imminent performance, and purchased replacement copies will be substituted in due course. Purchased printed copies may be edited provided that the fundamental nature of the work is not distorted or the lyrics altered, or lyrics added, if none exist. Musical scores should not be reproduced without inclusion of relevant copyright notices.

### **H. Photographs and other visual material**

**1. Copyright.** Copyright of visual materials may involve many rights including: copyright in the image; copyright in the subject; trademarks in the subject; and personality rights if people are depicted. Images of art are important elements in many courses of instruction and images of art are popular subjects for multimedia works. If you are interested in using photographs of art, you should consider that there may be a copyright in the photograph as well as a copyright in the artwork depicted in the photograph. If both works are still protected by copyright and your use requires permission, you may need to seek permission from the owner of both the rights in the photograph and the owner of the rights in the artwork.

In *Bridgeman Art Library, Ltd. V. Corel Corp.* (1999) the Second Circuit Court ruled that there can be no protection for photographs of art works in the public domain. Photographers may not seek copyright

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<sup>14</sup> §107(4).

<sup>15</sup> §107(4) and *Basic Books v. Kinko's*.

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protection for photographs that merely reproduce art, unless they have added a new, original element to the work.<sup>16</sup>

Guidelines for the acquisition and use of images in non-profit educational settings have been developed by the Visual Resources Association and may be helpful to faculty or students planning to use images of art in courses or projects. These guidelines are available on the Visual Resources Association website at: <http://www.vraweb.org/>.

**2. Trademarks.** Subject matter of visual images may also include company names or logos and these should be used carefully. Even if you took the photo yourself, if you use an image on your website that shows a company logo or trademark, this may imply a relationship between you and the company that does not exist.

**3. Personality Rights.** Individuals have a right to control how their image, likeness, name, voice or other identifying characteristics are used. If you wish to use photographs of people, you may need to obtain a release to use their image. The Video and Photography release form used by Southeast Missouri State University is available for downloading at [http://www.semo.edu/president/images/UR\\_PhotoRelease.pdf](http://www.semo.edu/president/images/UR_PhotoRelease.pdf).

**4. Display Rights.** Copyright ownership of visual materials, including photographs, encompasses control over display as well as reproduction. Section 110 of the U. S. Copyright Act addresses the display of copyrighted slides and photographs in educational settings by allowing “display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom, or similar place devoted to instruction” so long as the copy of the artwork was lawfully made. Furthermore, the purpose of display must be integral to the course.

### 5. Digital Morphing

Digital morphing refers to changing digital information, either structurally (e.g., code) or on the surface (e.g., image manipulation). The mutation of copyrighted digital information, whether or not the change is visible, is a violation of copyright law.

### I. Sound recordings

A sound recording is a work fixed on a tangible medium, such as a cassette tape, a vinyl album, or an MP3 file. The owner of copyright of a sound recording has the exclusive right to distribute copies of the copyrighted work to the public for sale or other transfer of ownership, or by rental, lease or lending.<sup>17</sup> Non-music sound recordings may not be copied unless replacement recording from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use, however. A single

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<sup>16</sup> Photographs of sculpture are much more likely to be considered creative works of art and require copyright protection because of the higher level of skill needed to create different effects based on lighting, angle and distance.

<sup>17</sup> §106(3).

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copy of a sound recording of copyrighted music may be copied from sound recordings owned by the University or an individual faculty member for the purpose of constructing an aural exercise or examination and may be retained by the University or the faculty member.

### J. Unpublished works

Unpublished works, like theses, dissertations and archival material, may be protected by copyright. Before 1978, unpublished works were not protected under federal law, but instead were covered by common law copyright protection. Common law copyright, enforced under state law, applied automatically, and unlike current federal law, lasted indefinitely, as long as the work remained unpublished, creating serious challenges for researchers who wanted to use or quote from primary documents. With the revision of the U. S. Copyright Act on January 1, 1978, Congress abolished all common-law copyrights and brought all works – published and unpublished -- under federal copyright protection. General rules of copyright duration now apply to unpublished works.

*Works created since January 1, 1978.* For works created since January 1, 1978, the term of copyright duration is the life of the author, plus 70 years, for works of single authorship. In the case of works-for-hire, the duration of copyright for an unpublished work is generally 120 years from the date of creation. If the work is eventually published, the copyright duration will be the lesser of either 120 years from creation or 95 years from publication. The work-for-hire rules regarding duration also apply to anonymous or pseudonymous works, which lack a clear identification of an author.

*Works created before January 1, 1978.* For works created before January 1, 1978, Congress applied the same terms of copyright duration; but postponed implementing those terms until January 1, 2003, when a great wealth of primary source material entered the public domain.

*Fair Use and Unpublished Works.* US courts have applied a relatively narrow definition of “fair use” to unpublished material, reasoning that the private nature of the unpublished material (e.g., letters, diaries, manuscripts) merits greater protection under the law. Stronger protection allows the copyright holder(s) to choose when and how to make private information public.

### K. Video and Film Recordings<sup>18</sup>

Ownership of a film or video recording does not confer the right to show or display the work publicly. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a recording may be “performed.”

- 1. Classroom use.** Use of video and film recordings is permitted in nonprofit educational settings as long as certain conditions are met. Section 110(1) of the Copyright Act of 1976 specifies that performance or display of a work by instructors or pupils in a face-to-face classroom setting, or

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<sup>18</sup>Performance rights and copying restrictions also apply to exhibition of motion picture recordings in digital format.

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similar place devoted to instruction, is permissible, as long as the displayed recording was lawfully acquired. Additionally, the relationship between the displayed work and the course must be explicit, and use of the copyrighted work must not be for entertainment purposes.

2. **Other uses.** Other film and video recordings owned by the University may be viewed by students, faculty or staff at workstations or in small groups in the Instructional Material Center at Kent Library. These videos may also be viewed at home (e.g., dorm room) so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall common room, require explicit permission from the copyright owner for “public performance” rights. No fees for viewing a video are permitted even when public performance rights are obtained.
3. **Copying.** Copying film or videotapes without the copyright owner’s permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price.<sup>19</sup>
4. **Off-Air Recording.** Very specific guidelines govern the taping and use of broadcast and cablecast television programs by non-profit educational institutions. The Kastenmeier Guidelines govern the length of the time that these programs may be used and retained by the institution, and the manner in which these recordings may be used during that period. These guidelines are included in Appendix IV of this manual.

## XII. Copyright Compliance Issues

### A. Course Management Systems

**1. Content uploaded by faculty, staff or others.** Faculty, staff and others who upload content to the OIS course management system must adhere to copyright law pertaining to the reproduction and distribution of material for use by multiple students. Generally, if permissions are needed to use the content in paper format, they will also be needed to use the material in an electronic format, as well.

### B. Library Issues

**1. Interlibrary Loan and Document Delivery.** Kent Library may participate in interlibrary loans without obtaining permission provided that the “aggregate quantities” of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. Kent Library follows the CONTU guidelines for defining “aggregate quantities.” The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many.

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<sup>19</sup> §108.

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If the articles or items being copied have been obtained through a digital license, you must check the license to see under what terms and conditions, if any, interlibrary loan (“document delivery”) is permitted.

**2. Reserves, Library.** Photocopied book excerpts, magazine or journal articles, along with original texts, may also be placed on reserve without permission from the copyright holder(s). An instructor may place on reserve multiple copies for one class, but requests should be based on: (1) number of students in the course; (2) time allowed to complete the assignment; and (3) complexity of the readings. Commercial coursepacks may be placed on reserve without violating copyright. An instructor may place the same material on reserve for one semester only. After one semester, they may not place the same materials on reserve again without securing permissions from the copyright holder(s). Textbooks may be placed on reserve only in special circumstances.

### **C. P2P File Sharing**

“Peer to Peer” file sharing is not itself illegal, but is often used for the unauthorized downloading and uploading of copyright-protected material, such as music, movies, video games, computer software and photographs. Existing litigation has ruled against a “fair use” defense in cases where substantial amounts of P2P file sharing of copyrighted material has taken place. Users of the University network who engage in P2P file sharing of copyrighted material may be subject to serious liability.

### **D. Photocopying**

**1. Students.** Photocopying by students is subject to fair use analysis. A single photocopy of a portion of a copyrighted 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.

**2. Classroom Handouts.** In general, classroom handouts fall into two categories – spontaneous and planned – one is likely covered by “fair use” while the other is not. If the handout is new work for which the instructor could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, he or she may use the work without obtaining permission. If the handout is planned in advance, however, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, the instructor must obtain copyright permission to use the work.

## **XIII. Damages for Copyright Infringement**

By reproducing, republishing, or redistributing the work of a copyright holder without permission, you may be in violation of the Copyright Act. The copyright holder may sue for compensation. Sections 501

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and 513 of the Copyright Act provide procedures and remedies available to the rights' holder. These include:

- Obtaining an injunction against the infringing activity
- Having the infringing item seized and/or destroyed
- Pursuing criminal charges
- Seeking damages in the form of profits from the infringing item
- Recovering court costs and attorney fees

Copyright infringement may result in the payment of a wide range of statutory damages, and attorney's fees for each infringement, and jail time. More severe penalties may result if the court feels that the infringement was committed willfully or for profit or financial gain.

This manual will be regularly reviewed and updated as necessary. The Southeast Missouri State University Copyright Manual has been most recently updated in August 2008.

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**APPENDIX I:  
Fair Use Checklist**

<b>Factor</b>	<b>Favoring Fair Use</b>	<b>Opposing Fair Use</b>
Purpose	Teaching	Commercial use
	Multiple copies for classroom	Entertainment use
	Scholarship	Financial gain
	Criticism	Removal of copyright notice
	Commentary	Unrestricted use
	News reporting	
	Parody	
	Transformative use	
	Restricted access for classroom use	
	Nature	Published work
Factual work		Creative work
Nonfiction work		Fiction work
Directly related to work		Non-essential to use
Amount	Small portion	Large portion/entire work
	Portion is relevant to use	Portion is significant ("heart of work")
	Portion is not essence of work	
Effect	Copy lawfully acquired	Many copies made
	Few copies made	Affects market or potential market
	No significant effect on [potential market]	Permissions available
	No market for permissions	Licensing available
		Unrestricted public access
		Unlimited term of use

**APPENDIX II:  
Exemptions to the Digital Millennium Copyright Act (DMCA)**

Exemptions to §1201 Rules

There are exemptions that allow researchers to circumvent some of the restrictions, but the conditions are narrow and specific and must be read for possible violations to other sections of the DMCA. Exemptions protect both the research and distribution of research results when the results are not for commercial or pirated uses. In brief, §1201 provides anti-circumvention exemptions for:

1. **Nonprofit libraries and archives** to evaluate copyright-protected works as long as the work is not available in another form and for the sole purpose of evaluating whether or not to acquire a lawfully-obtained copy. The library/archives may retain the evaluation copy only until a determination is made and may not use the evaluation copy for other purposes (e.g., exhibition, circulation). Qualifying libraries/archives must be open to the general public or persons specializing in research in a particular field.
2. **Law enforcement, intelligence, and agents acting on behalf of state of federal government** involved in lawfully authorized investigative or intelligence-seeking activities (e.g., searching computers, computer networks).
3. **Measures that collect and disseminate personal information.** Individuals may disable technological measures that control access to protected works if the purpose of those measures is to collect and/or distribute information of a personal or private nature about the user, as long as no other laws are violated in the process.
4. **Reverse engineering for some limited research purposes.** Research engineering of anti-circumvention measures is permissible on lawfully-acquired copies of protected works for research necessary to create interoperability with an independently-designed computer program(s) or system(s). These anti-circumvention measures may also be shared, but only for the purpose of enabling interoperability of computer programs(s) and/or systems.
5. **Encryption research.** Circumvention of technological measures is permissible if conducted in the course of legitimate research on encryption technology on lawfully-obtained copies of protected works. Research must be deemed necessary to identify and analyze flaws in the technology; and must advance knowledge and development of encryption technologies. Furthermore, researchers must make a good faith effort to secure the permission of the copyright holder before beginning their research.

In the event of litigation, the courts will consider several factors in determining whether or not the exemption for encryption research applies:



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- The manner in which the research was disseminated (e.g., scholarly or commercially)
- The training and credentials of the researcher(s)
- If the findings of the research were shared with the copyright owner, and when

This is not a complete list of the exemptions, but those most likely to affect individuals engaged in academic pursuits. For the complete text of the DMCA, please visit <http://www.copyright.gov/title17/>.

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**APPENDIX III:  
Additional Copyright Resources**

**American Library Association, Washington Office,**

<http://www.ala.org/ala/washoff/woissues/copyrightb/copyright.cfm>

An intellectual property clearinghouse with links to recent news articles, current federal and state legislation, summaries of current court cases, information on fair use and e-reserves, libraries and licensing, Section 108, international copyright and digital rights management.

**ASCAP,** <http://www.ascap.com/ace.html>

Sponsored by the American Society of Composers, Authors and Publishers of music, site provides access to a title search database, useful in locating copyright holders of lyrics and musical scores.

**Association of American Publishers,** <http://www.publishers.org>

Website for the principal trade association of book publishers in the United States, including scholarly, small and independent presses. Provides information on requesting copyright permissions, permissions department contacts, a standard permission letter request form, as well as current news from around the world on copyright issues, and links to other copyright resources.

**Authors Registry,** <http://authorsregistry.org>

New York-based registry of authors, agencies, and organizations from the literary world, useful in searching for copyright holders and permission seeking.

**BMI (Broadcast Music, Inc.),** <http://www.bmi.com/>

A performing right organization that collects license fees on behalf of songwriters, composers and music publishers and distributes them as royalties to those members whose works have been performed.

**Choral Public Domain Library,** <http://www.cpdl.org/>

Begun in 1998, CDPL is an internet-based free sheet music website that specializes in choral music. All scores are in the public domain and can be freely downloaded. Most scores are public domain editions of music whose copyright has elapsed, but some scores are new compositions offered for free download by the composers.

**Copyright Act of the United States of America,** <http://www.copyright.gov/title17/>

Complete text of U. S. Copyright Law (USC Title 17 and its amendments) available from the U. S. Copyright Office.

**Copyright and Fair Use, Stanford University,** <http://fairuse.stanford.edu>

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Sponsored by the Stanford University Libraries and Academic Information Resources, the website is a clearinghouse of copyright information, with information on current legislation, news, links to primary resources, charts and tools, guidelines and policies of academic institutions, copyright FAQs, blogs and links to additional resources.

**Copyright Clearance Center**, <http://www.copyright.com>

Operating since 1978 as a non-profit company, the CCC offers licenses and permissions to content from a variety of publications. As a member of the International Federation of Reproduction Rights Organisations (IFRRO), the CCC's bilateral worldwide agreements create a global system for licensed content use.

**Crash Course in Copyright**,

<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>.

University of Texas online copyright tutorial and supplemental resources, including readings on fair use, copyright management, licensing, library issues (e.g., reserves, ILL), and a series of online presentations by Georgia Harper, UT's General Counsel, on various facets of copyright law.

**Creative Commons**, <http://www.creativecommons.org>

A non-profit organization that permits creators to enter their works directly into the public domain or alternately select licensing agreements with less restrictive terms of copyright than exists under current U.S. code.

**Digital Millennium Copyright Act Summary**,

<http://www.loc.gov/copyright/legislation/dmca.pdf>.

U. S. Copyright Office Summary of 1998 Act.

**Educom Code**, <http://www.educause.edu/ir/library/html/code.html>

"Using Software: A Guide to the Ethical and Legal Use of Software for Members of the Academic Community." Facts and frequently asked questions about the use of software, site licensed software, shareware, and public domain software.

**Electronic Frontier Foundation**, <http://www.eff.org>

Founded in 1990, the EFF is a donor-funded non-profit organization that defends the public interest in questions involving technology and digital rights. EFF is active in the opposition of legislation that would limit free speech, innovation and consumer rights, and works to educate policymakers, the public and the press. Website provides links to blogs on a variety of topics including intellectual property, digital rights management, the Digital Millennium Copyright Act, as well as updates on legislation and current news.

**Frequently Asked Questions (and Answers) about Linking**,

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<http://chillingeffects.org/linking/faq.cgi>.

An FAQ page regarding website linking, maintained by the Electronic Frontier Foundation.

**Harry Fox Agency**, <http://www.harryfox.com/mechanical.html>

A clearinghouse that licenses, collects, and distributes royalties on behalf of musical copyright owners.

**Intellectual Property and Copyright Information**,

<http://www.lib.ncsu.edu/scc/copyright/copyrightmenu.html>.

Website of the Scholarly Communication Center at North Carolina State University's Library System, provides a model for other universities interested in developing a copyright education program for their campuses. Website includes an online tutorial, information on the TEACH Act, copyright registration, licensing, obtaining permissions, open access publishing and other intellectual property issues.

**Kohn on Music Licensing**, <http://www.kohnmusic.com/>

Sponsored by Al Kohn, a fifty-year veteran of the music industry business, the website features information on current music copyright issues, a forum for seeking free advice regarding copyright and music, and links to music clearance organizations, performing rights societies, publisher organizations, songwriter organizations, and broadcast associations.

**Music Library Association**, <http://musiclibraryassoc.org>

Access to various guidelines relevant to music and education as adopted by professional organizations, including the Music Library Association's statements on the Copyright Law and Fair Use in Music and Digital Transmission of Electronic Reserves, links to additional resources, and FAQs regarding general copyright provisions, reserves, preservation, performance rights, issues for composers and authors, and video in the library.

**Project Gutenberg**, <http://gutenberg.net/>

Online collection of literary and reference works (over 20,000) in the public domain available for free downloading and use.

**Public Domain Information Project**, <http://www.pdinfo.com/default.htm>

A reference site useful for identifying songs and music in the public domain. Includes lists of public domain music, royalty free music recordings available for license, and reprints of public domain sheet music.

**Regents Guide to Understanding Copyright and Educational Fair Use, Board of Regents of the University System of Georgia**, at <http://www.usg.edu/legal/copyright/>

UGA System Committee on Copyright guidelines providing illustrative examples of fair use and the legal background of copyright law. Includes link to Regents Guide on the TEACH Act.

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**SESAC**, <http://www.sesac.com/>

A performing right organization that collects license fees on behalf of songwriters, composers and music publishers and distributes them as royalties to those members whose works have been performed.

**Software and Information Industry Association**, <http://www.siaa.net/>

Anti-piracy link provides FAQs, current news, and educational resources, including a copyright glossary, WIPO Copyright Treaty, model policy statements, information on fair use and the First Sale Doctrine, the DMCA, and copyright material specifically geared to the educational community.

**Title 17, U.S.C.**, <http://www4.law.cornell.edu/uscode/17/>

Cornell University Law School's online collection of U.S. Code, with Title 17 pertaining to copyright.

**United States Copyright Office**, <http://www.copyright.gov/>

Website maintained by the government office that administers the United States registry of copyrights. Provides information on current copyright news – domestic and international, legislation, texts of existing legislation, licensing, registration forms and instructions, and a searchable registry of copyrights.

**University of Pennsylvania Libraries', "Online Books Page,"**

<http://digital.library.upenn.edu/books/index.html>

Links to online books and serials that are available for free downloading because of expired copyrights, permission from the copyright holder, or because they were entered directly into the public domain by the creator.

**When Works Pass into the Public Domain**, <http://www.unc.edu/~unclng/public-d.htm>

Useful copyright chart for determining the copyright status of published and unpublished materials.

**APPENDIX IV:**

**The Kastenmeier Guidelines pertaining to the Recording of Broadcast Programs**

These guidelines were developed in March 1979 to create “fair use” standards for the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. “Broadcast programs” are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used only once by individual teachers in the course of relevant teaching activities, and repeated only once when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. “School days” are school session days not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions, within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes (i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

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9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.