

**Grinnell College
Copyright Policy**

Developed by the Grinnell College Copyright Taskforce, 2005-07.

*Approved by Grinnell College legal counsel and the President of the College
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*Subject to further review over the summer of 2007 and
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that may lead to additional revisions.*

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Section 1: Principles

Grinnell College is a private not-for-profit educational institution founded in 1846; it is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. As a teaching and learning community, the College holds “that knowledge is a good to be pursued both for its own sake and for the intellectual, moral, and physical well-being of individuals and of society at large.”¹

This policy affirms the College’s commitment to comply with United States law pertaining to copyright as expressed in Article I, Section 8 of the U.S. Constitution and codified in various laws; to respect faithfully the property rights of authors and their assignees; to educate members of the campus community about copyright law and rights available under that law; and to exercise vigorously our rights and responsibilities as teachers, scholars, authors, and creators in educating students, creating new works of pedagogy, scholarship, and art, and sharing those works with a wider community. This policy outlines the relevant statutes, codifies College practices relevant to copyright, and recommends a variety of tools by which faculty, staff, and students can learn more about copyright law and ensure their own compliance with its provisions.

This policy also affirms that intellectual works eligible for copyright protection created by the faculty and students of the College in the course of their academic pursuits (including most courseware, syllabi, textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, and like works) are owned by their creator(s) and that any revenue derived from their work likewise belongs to the creator(s). However, unless otherwise agreed in writing between the creator(s) and the College, the College’s use of this material shall be royalty-free. In general, non-academic work created by faculty, staff, or students in fulfillment of their paid responsibilities – known as “work for hire” -- is owned by the College.

Faculty, staff, and students are responsible for understanding this policy and shall be accountable for actions that willfully disregard it. The College will provide resources for helping the community understand copyright law, and, in the event of a lawsuit, will defend members of the community who have demonstrated a good faith effort to comply with the law.

Copyright is an unsettled area of the law which may be revised by amendment or adjudication. Grinnell College will monitor legal developments to ensure that College practices remain compliant with the letter and spirit of the United States copyright law.

¹ Grinnell College Mission Statement, 2002. <http://www.grinnell.edu/offices/president/missionstatement/>, accessed 6 November 2006.

Section 2. Key Elements of U.S. Copyright Law

Disclaimer: The following provides a short overview of key issues. It is not intended to provide legal advice. U.S. copyright law is complex. For application to specific cases, a lawyer's advice may be needed.

The power of the U.S. Congress to legislate copyright protection is assigned in Article I, Section 8 of the U.S. Constitution to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The United States copyright law is contained in Title 17 of the United States Code. The Copyright Act of 1976 provides the basic framework for the current copyright law and has been amended frequently since 1976.

A. *Summary*

All members of the Grinnell College community who create or use original works have a responsibility to know and understand the following features of copyright law.

- Copyright protects original works.
- Copyright gives authors the right to control the creation of not only copies but also derivative works, among other things.
- The term “public domain” refers to works no longer protected by copyright or not eligible for copyright protection. Public domain works can be used freely.
- U.S. copyright law provides faculty with rights to use portions of copyrighted works in the classroom, but those rights do not necessarily extend beyond the real or virtual classroom.
- U.S. copyright law gives libraries extra rights to make copies.
- The principle of *fair use* permits certain uses of copyrighted works without the permission of the copyright holder.
 - Some, but not all, educational uses qualify as fair use.
 - Four principles govern whether or not a use is fair use: The purpose and character of the use, the nature of the work, the amount used, and the effect on the market for the work.
 - It is the responsibility of anyone making or requesting copies (or derivatives) to verify that use is fair use.

There are several other principles and laws bearing upon particular uses of original works.

- The *first sale* doctrine indicates that the owner of a physical copy of a work has particular rights, including the right to loan that physical copy to others.
- The 1998 *Digital Millennium Copyright Act* (DMCA) places additional restrictions on the copying of resources in electronic format.
- The 2002 *Technology, Education, and Copyright Harmonization (TEACH) Act* restores some rights for the distribution of materials in electronic format for online education.
- The principle of *work for hire* indicates that some copyrightable work belongs to the organization that contracted the work, rather than to the author of the work.

The remainder of this section considers these topics in greater depth.

B. Copyright Basics

Copyright is one of the three main types of *intellectual property rights* granted by law to creators of works. In the U.S., copyright, patent, and trademark law stem from a few key words in the Constitution:

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

Copyright law protects original expressions (texts, images, musical notations and performances, etc.) while patent law protects ideas (inventions). U.S. Copyright law is described in Title 17 of the U.S. Code. (See appendices for links to the full code.)

Copyright law grants those who create original works the rights to choose how those works are and are not used and, if they so desire, to receive compensation for their work or to transfer ownership to others. What works are protected? Section 102 of Title 17, defining the subject matter of copyright, notes

Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

In contrast, ideas, procedures, processes, principles, and such are not protected by copyright but may be eligible for protection by patent.

In the U.S., as in many other countries, copyright no longer requires registration or notice. That is, as soon as a work is placed in a “tangible medium of expression,” copyright exists in the work. Copyright is in place even if the author neglects to put a formal statement of copyright (such as “Copyright 2007, Grinnell College”) on the work.

Copyright protects not only the work itself and the right to make direct copies, but also the right to make derivative works. For example, an author has the right to decide whether or not translations of her work are made, whether excerpts are used in compilations, and whether successor works that rely heavily on the substance of the original can be made.

While there is general consensus about the framing rationale for copyright and rights granted by copyright, different constituencies have differing views about the extent and limits of copyright. For example, should an author have the right to restrict whether her work is used in ways contrary to the spirit of the original? How long should copyright last in order to ensure that authors receive appropriate compensation and maintain appropriate control?

In response to these questions, U.S. Copyright law has evolved into a long and complex document. Circular 92, which presents Title 17, is nearly 300 pages long. Even with all those details, many issues are left unresolved, so particular cases must be resolved in the courts.

At an academic institution like Grinnell, copyright issues of particular interest include *public domain* (works not protected by copyright), *fair use* (certain applications, particularly educational, in which the public good outweighs the rights of the copyright holder), *library use* (another instance in which the public good may moderate the rights of copyright holders), *first sale* (the rights associated with a particular copy, rather than the work as a whole), *online education*, and *digital rights*.

C. Rights Granted to Copyright Holders

U.S. Copyright law grants a wide variety of exclusive rights to copyright holders. Section 106 (that is, 17 USC 106) indicates that

[T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;*
- (2) to prepare derivative works (adaptations) based upon the copyrighted work;*
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending (except as limited by the "First Sale" rights outlined in section 109);*
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;*
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and*
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.*

D. Limitations on Copyright Owners' Exclusive Rights

The rights of copyright owners are limited in several respects by the copyright law. While fair use is one well-known limitation, there are a variety of others of equal import, particularly in the context of educational use. Prospective users of material that may fall under copyright protection are advised to consider the following exemptions. If a proposed use of copyright-protected material does not fall into any of these exemptions, the user must seek explicit permission from the copyright owner.

D.1 Public Domain

As the phrase "for a limited time" suggests, copyright does not last forever. In the U.S. most copyrights now last for 75 years beyond the death of the original author. When the copyright for a work expires, it becomes part of the *public domain*. In addition, all works prepared by an officer or employee of the United States government as part of that person's official duties are public domain; however, works published by U.S. state and municipal governments or other nations may be protected by copyright. Other authors may choose explicitly to release their work to the public domain. Public domain works can be used in any way one desires: One can create derivative works, publish them verbatim (and charge others for the publication), make photocopies for class, and otherwise take advantage of rights not available for copyrighted works.

All works published before 1923 are in the public domain. Others will be added as their copyrights expire. For further information on how to determine whether or not a work's copyright protection has expired, please consult Cornell University's "Copyright Term and the Public Domain in the United States"² which is reproduced in Appendix A2.

D.2 Special Classroom Rights (Section 110 and the TEACH Act)

Section 110 speaks to a variety of special rights accorded to classroom teachers to use copyrighted materials in the classroom, including not just traditional face-to-face classroom situations, but also distance-learning environments. In particular, Section 110 grants the following:

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction [...];

(2) [...] the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission.

There are a number of requirements for such uses. All the uses covered in Section 110 must be of legally acquired copies of the materials. In addition, the materials must be displayed for educational reasons, a member of the class (either instructor or student) must be in charge of the display of the materials, and the materials should only be displayed to members of the class. The latter requirement suggests that it is inappropriate to invite guests to a classroom showing of a movie.

In November 2002, the performance and display exemptions of Section 110(2) were revised and updated to address the digital environment. The revised provisions facilitate digital educational use of materials without requiring copyright permission, subject to certain conditions. The TEACH Act says that it is not copyright infringement for teachers and students at an accredited, not-for-profit educational institution to transmit performances and displays of copyrighted works as part of a course if certain conditions are met. If these conditions are not or cannot be met, use of the material will have to qualify as a fair use or permission from the copyright holder(s) must be obtained.

The exemptions offered by the TEACH Act apply specifically to accredited nonprofit educational institutions and governmental bodies. Appendix A4a provides a checklist to assist educators in complying with the terms of the TEACH Act.

The exemptions cover:

- Performances of nondramatic literary works

² Peter Hirtle, Copyright Term and the Public Domain in the United States:
http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

- Performances of nondramatic musical works
- Performances of reasonable and limited portions of any other work
- Display of any other work in an amount comparable to that typically displayed in a live classroom setting

The exemptions do not cover:

- Digital educational works (i.e., works produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks)
- Unlawful copies (copies you know or reasonably should know were not lawfully made or acquired)

The exemptions apply only if:

- The display or performance is done by, at the direction of, or under the actual supervision of an instructor, as an integral part of a class session as part of systematic mediated instructional activities, and is directly related and of material assistance to the teaching content. That is, the uses of materials in the program must be "an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting." The Act also specifies that "mediated instructional activities" do not encompass uses of textbooks and other materials "which are typically purchased or acquired by the students."
- The transmission is made solely for and reception is limited to (as technologically feasible) students enrolled in the course, and "downstream" technological controls are instituted that reasonably prevent retention in accessible form for longer than a class session and unauthorized further dissemination in accessible form
- There is no interference with the copyright holder's technological measures that prevent such retention and dissemination

Conversion of analog material to digital is permitted only if no digital version is available to the institution or the available digital version is technologically protected to prevent TEACH uses.

Use of the TEACH Act also requires that the institution promulgate copyright policies; provide accurate information about copyright; promote copyright compliance; and provide notice to students that the course materials may be copyrighted.³

D.3 Reproduction by Libraries and Archives (Section 108)

While first sale doctrine provides libraries with their essential right to loan materials, copyright law also acknowledges a number of special rights and responsibilities that are traditionally

³ Adapted in part from: The TEACH Act Toolkit (North Carolina State University): <http://www.lib.ncsu.edu/scc/legislative/teachkit/overview.html>; and Distance Education and the Teach Act (American Library Association): <http://www.ala.org/ala/washoff/woissues/copyrightb/distanced/distanceeducation.cfm>

assigned to public libraries and research archives. Section 108 speaks to a number of these rights, particularly with regards to making copies for use by patrons.

[I]t is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work [...] or to distribute such copy or phonorecord[.]

For a library to make copies under this exemption, the use must be noncommercial, the library must be open to the public (or to a scholarly community), and the copy must include a copyright notice. The section also permits somewhat broader library copying for providing access to unpublished works and for preservation.

Section 108 also provides libraries and archives with the rights to make copies that become the property of one of their users, provided that the copy is of a small portion of a work (such as an article in a collection) or of the whole of a work “which can not be obtained at a fair price”, provided it is evident that the use will be for scholarship or study and the library or archive displays a prominent warning of copyright. This is the statutory basis for interlibrary loan.

However, Section 108 also places some restrictions on libraries and archives.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work

These restrictions make it clear that the library and library reserve system may not be used to substitute for course packs.

D.4 Fair Use (Section 107)

The tension between the rights of the author and the benefits of the public is a consistent issue in copyright law. In a few areas, there was a longstanding tradition that public needs were more important than the rights of most copyright holders. These areas included education, news reporting, and scholarly research. However, few of these special cases were formalized in the law. When Congress undertook a major rewrite of Title 17 in the early 1970’s, one of the emphases was to clarify these rights, typically referred to as *fair use* rights.

A number of committees have promulgated precise guidelines as to the amount and type of use eligible for fair use. Some of these guidelines are conservative. For example, guidelines now expressed in Circular 21 of the U.S. Copyright Office, including restrictions that no more than nine instances of copying happen in any semester, were nearly adopted by Congress. In the end, Congress decided that they could not devise precise guidelines that successfully balanced the needs of all stakeholders or that anticipated all possible reproducing technologies. Instead, they wrote a short set of guiding principles, codified in Section 107 of Title 17.

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- (2) the nature of the copyrighted work;*
- (3) the amount and substantiality 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.*

Because these factors are not stated precisely, different people may make different decisions about what does and does not constitute fair use. Ultimately, only the courts can determine whether a given use of copyright-protected material falls within fair use or violates the law. Appendix B provides several tools to aid in making judgments of fair use.

D.5 First Sale (Section 109)

While copyright law protects “intellectual property”, most copyrighted intellectual property has a physical manifestation (e.g., as a book, videotape, or compact disc). Common law tradition suggests that the owner of a physical object has particular rights associated with that object. Section 109, Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord, speaks to those rights, typically called *First Sale* rights. In particular, Section 109 states that

Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

First sale doctrine has also been interpreted to permit the leasing of some works (particularly videotapes). However, it explicitly disallows the commercial loan or leasing of software and musical works.

First sale doctrine provides the legal grounds for libraries in the U.S. to loan books to the general public. Section 109 also grants libraries additional rights not necessarily available to all members of the public, such as the rights to loan software.

First sale doctrine has also been interpreted to permit the library to place materials legally owned by faculty members on reserve.

E. Other Relevant Issues

E.1 The Digital Millennium Copyright Act

In the mid-1990's, the rise of the Internet led Congress to consider particular issues of copyright in the digital realm. These updates were codified in the Digital Millennium Copyright Act (DMCA), which is now incorporated in Title 17. One significant emphasis of the DMCA is prohibition of circumvention of copyright protection mechanisms, except in a few restricted situations.

The DMCA also limits the liability of Internet Service Providers (ISPs), provided they meet a variety of guidelines, including timely removal of material reported by copyright holders as violating their copyrights and designating an agent for receiving such complaints. Because Grinnell serves as a kind of Internet Service Provider (to its students, faculty, and staff), it must meet these provisions of the DMCA. The Director of Information Technology Services is Grinnell's Designated Agent "to receive notifications of claimed infringement".

E.2 Work for Hire

While most works belong to their authors, when works are produced as part of one's contracted work for an employer, those works may belong to the employer. Such works are considered "works made for hire", or simply "work for hire". Section 101 of Title 17, Definitions, specifies that

A "work made for hire" is—

- (1) a work prepared by an employee within the scope of his or her employment; or*
- (2) a work specially ordered or commissioned for use as a contribution to a collective work[.]*

At Grinnell, most administrative documents (such as this copyright policy) are considered works for hire. Educational materials, such as course syllabi or Web sites, are not considered to be works for hire, and belong to the faculty who create them. Faculty research works, including, but not limited to, scholarly papers, presentations, and data sets, are also the property of the faculty who create them.

Section 3: Author Control of Copyright

Authors, artists, composers, and other creators are the owners of the copyright in the academic and creative works they produce until they transfer those rights to another party. Subsequent publication of those works as books, journal articles, recordings, and other products requires agreement in the form of a contract between the creator and the publisher (often called a ‘copyright transfer agreement’).

Traditionally, creators transfer full and exclusive rights to the publisher in exchange for publication and – for some kinds of work – royalties. As a consequence, the terms (including prices) under which readers, viewers, listeners, and creators will have access to or may use the work can be set entirely by the publisher. These terms may not meet the creator’s interest in assuring that the work is widely available for use in teaching or research.

However, copyright transfer need not be an all-or-nothing arrangement. Authors may reserve certain rights for themselves while granting other rights to the publisher or may transfer copyright to the publisher with certain qualifications. Increasingly, scholarly publishers will accommodate their authors’ preferences to share their works with students and colleagues via the Web and in other ways, and will negotiate changes to their standard copyright transfer agreement.

Authors at Grinnell College are encouraged to review their copyright transfer agreements carefully, and to consider the following options for preserving both their interest in seeing their work disseminated by publishers and their interest in ensuring that their work contributes maximally to the public good.

A. *Contract amendment:* Copyright transfer agreements (author contracts) provided by publishers can be amended in writing or by attaching a simple form:

Add the following language to a contract: "Notwithstanding the above language, I reserve the rights to use this work in my teaching and research, for my colleagues at Grinnell College to use this work in their teaching and research, and to place an electronic copy of this work on a publicly accessible Web site."⁴

or:

Attach the following form to a contract: <http://www.arl.org/sparc/author/addendum.html> or Appendix 6H.

A Note on Open-access Posting: Many scholarly authors wish to make copies of their published articles freely available via a personal Web site or an institutional or disciplinary repository. *If copyright has been transferred to the publisher, this is not legal unless the publisher grants permission such as by accepting the amendment above.* Many scholarly publishers do permit this

⁴ Adapted from the University of Kansas, http://www.copyright.ku.edu/manuscript_contract_lang.shtml

by policy, and others will grant permission on request. Some will permit the final published version of the article to be posted, and others will permit only an earlier version to be posted. Grinnell authors are encouraged to exercise their rights under these policies.

For a list of policies by publisher see <http://romeo.eprints.org/publishers.html>.

B. Creative Commons licensing: Creators may release their work to the public – through a Web site, institutional repository, or CD, for example – under a “license” that defines what users may and may not do with it. Creative Commons is a not-for-profit organization that recommends several models that creators may choose among. Under Creative Commons licenses, authors retain their copyright.

The Creative Commons scheme distinguishes several rights that authors can exercise in various combinations as they prefer:

- Attribution: The author may permit copying and distribution of the work with the condition that the original authorship is acknowledged, or may waive this requirement.
- Commercial use: The author may permit copying and distribution of the work only for non-commercial purposes, or may allow commercial uses.
- Derivatives: The author may permit transformation of the work into new works, or may forbid transformation of the work.
- Licensing for Subsequent Uses (“Share Alike” licensing): If Derivatives are permitted, the author may require that the derivative be distributed under the terms of the original license, or may waive this requirement.

Creative Commons licenses also include a set of baseline announcements of the rights of the author (to retain copyright) and of the user (fair use, first sale, and free expression rights).

Examples:

Attribution Required/Non-commercial Use Only/Derivatives Only Under Identical Terms:
Copyright © 2006 by Jane Doe. Some rights reserved. You are free to copy, distribute, display, and perform the work and to make derivative works under the following conditions: Attribution—You must give the original author credit; Noncommercial Use—You may not use this work for commercial purposes; Share Alike—If you alter, transform, or build upon this work, you may distribute the resulting work only under a license identical to this one. For any reuse or distribution, you must make clear to others the license terms of this work. Any of these conditions can be waived if you get permission from the copyright holder. Your fair use rights are not limited by the above.

Additional examples of Creative Commons licenses may be found at <http://creativecommons.org/about/licenses/meet-the-licenses>.

Section 4: Applications

This section covers some common situations in which the reproduction and distribution of copyright-protected resources may occur in teaching and research; it does not cover every situation. In all cases Grinnell College expects the individual to exercise informed judgment to comply with copyright laws and College guidelines.

In applying the fair use principle to reproduction of copyright-protected material, we recommend that faculty members use one of two techniques: They may follow the fairly restrictive guidelines expressed in Circular 21 of the U.S. Copyright Office, *Reproduction of Copyrighted Works by Educators and Librarians*, referenced in Appendix B1, or they may conduct a fair use analysis. A form is provided in Appendix A4c to facilitate this analysis. Whichever mechanism faculty members choose, we recommend that they maintain records of any analyses done.

Application of the TEACH Act to digital reproduction of copyright-protected materials requires that specific conditions be met by the instructor and by the College. The checklist at Appendix A4a outlines these conditions. As above, we recommend that faculty members keep a copy of the checklist for works reproduced under this Act. Faculty should consult with librarians or information technology professionals regarding the availability of the technological controls specified by the Act.

A. Course Reserves

The purpose of a reserve collection is to:

1. support the needs of a defined group of patrons within the Grinnell College community (usually a class)
2. provide timely, convenient, and efficient access to high-demand materials; and
3. protect materials that are at a high risk of theft or vandalism.

Course Reserve, whether physical or electronic, is a vital mechanism for providing supplemental material to courses of instruction at the College. As such, materials placed on reserve (including books, disks, AV materials, journal articles and/or photocopies, electronic resources, and non-book items) are not intended to comprise the core of a course's instructional material, but rather to augment it. Reserve materials are maintained in a separate location within the Libraries and on the Libraries' Web site, and access to the material is more restricted than is the access to items in general circulation.

The Libraries' course reserve systems are operated in a manner that respects the rights of copyright holders and the limitations to those rights as specified in current copyright law. The Libraries will seek permission for uses that exceed commonly accepted fair use guidelines, and reserve the right to refuse to place on course reserve any material that appears to violate copyright law.

When published materials otherwise available for purchase comprise the bulk of a course's instructional materials, use of course reserve is inappropriate. In these instances, faculty

members should find other ways to provide course materials. Options include course packs (coordinated through the Grinnell College Bookstore) or selection of alternative readings that are available for purchase. At all times the College expects faculty, staff, and students to make judicious use of Course Reserve, adhering to the College's respect for relevant copyright law.

B. Faculty Certification of Permitted Use

Individual faculty members are responsible for understanding the College's copyright policy and shall be accountable for actions that willfully disregard it. The College's responsibility in this area is to provide faculty members access to resources that facilitate determination of permitted uses. Faculty are responsible for consulting that information and applying it in accordance with the law. Appendices A and B of this document include tools to assist faculty in making judgments about permitted uses of copyrighted materials.

i. Role of Academic Support Assistants

At no time will an academic support assistant reproducing or circulating copyright-protected material in accordance with a faculty member's or supervisor's written or verbal instructions be assumed liable for any failure to adhere to copyright law. This protection does not apply to material distributed or reproduced by academic support assistants without the instruction, written or verbal, of a faculty member or supervisor, or to material distributed or reproduced by academic support assistants in a manner that does not reflect such instruction.

ii. Role of student employees

At no time will a student employee who is reproducing or circulating copyright-protected material in accordance with a faculty member's or an academic support assistant's written or verbal instruction be assumed liable for any failure to adhere to copyright law. This protection does not apply to material distributed or reproduced by a student without the instruction, written or verbal, of a faculty member, or to material distributed or reproduced by a student in a manner that does not reflect such instruction.

C. Academic Support Assistants, Student Employees, Administrative Staff

When employees, including support assistants and student employees operating in the capacity of academic or administrative support, carry out instructions by faculty or supervisory personnel to copy or otherwise reproduce or distribute copyright-protected material, the College understands that the staff member or student employee has assumed no liability for ensuring compliance with copyright law. If, however, any employees believe that tasks they are instructed to carry out are not in compliance with copyright law, they may pursue the following options:

- i. seek written certification of compliance from the originator of the task;
- ii. seek guidance from a supervisor who did not originate the task;
- iii. request that the faculty or supervisory personnel obtain permission from that employee's supervisor to carry out the task.

In all cases when academic support assistants, student employees in an academic support role, or other employees make a determination to reproduce or distribute copyright-protected material on their own initiative, they are expected to inform themselves of the College's policy for copyright compliance and conform to that policy. Appendices A and B of this document includes tools to help such employees make judgments about permitted uses of copyrighted materials.

D. Faculty Use of Student Works for Teaching or Publication

Intellectual works eligible for copyright protection created by students of the College in the course of their academic pursuits (including works of art, original musical compositions, scientific posters, creative and scholarly writing, and like works) are owned by their creator(s) and any revenue derived from these works likewise belongs to the creator(s).

However, unless otherwise agreed in writing, such work may be reproduced by the College and its officers for distribution within the College community without fee for instructional or administrative purposes. In spite of this, faculty or staff members who anticipate using student work outside the immediate context of the class for which it was created may wish to secure the student's permission in writing; a form for that purpose is provided in Appendix A.4e of this policy. The College may not distribute any such work by a student beyond the College community without first obtaining the consent of the student author or creator. Certain projects – such as MAPs – may include a requirement of dissemination outside the College. This requirement will be made explicit in registration or similar materials, and does not change the copyright status of the work.

E. Ownership of Courseware and Software

Individuals engaged in scholarly, pedagogical or creative efforts produce a great variety of copyrightable materials they may want to protect from unauthorized use. Intellectual works created by the faculty and students of the College in the course of their academic pursuits that are eligible for copyright protection include most courseware, syllabi, textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, and like works. These works and the copyright in these works are owned by their creator(s). Any revenue derived from these works likewise belongs to the creator(s).

Even though the College may provide some support in the way of facilities, materials, equipment, funding, or personnel, the creator(s) retain individual ownership of the copyright in such works. However, unless otherwise agreed in writing between the creator(s) and the College, the College's use of this material shall be royalty-free if it was designed for the express purpose of being available to individuals other than, or in addition to the creator(s) for use in teaching, administration, or other College activities. Such materials will remain available to the College free of charge, even if the creator has left the College.

F. Ownership of Non-Academic Work

In general, non-academic work created by faculty, staff, or students in fulfillment of their paid responsibilities – known as “work for hire” -- is owned by the College. The College will retain ownership of the copyright in works created in the course of an administrative assignment of the College, such as internal policies and procedures, internal studies and plans, or a report for a College committee. Similarly, the College will retain ownership of the copyright in works directed or commissioned by the College, such as articles for the alumni magazine, contributions to other College publications written by Office of Communication and Events personnel, or computer software developed by Information Technology Services staff.

On occasion, the College may grant its copyright in an administrative work to one or more individuals or may agree to joint ownership of the copyright. If an individual wishes to own the copyright in a work that falls into this category, he or she should raise the issue in writing before undertaking the work. The arrangement on which the individual and the College agree must be documented in writing. If no such written arrangement exists, the presumption of ownership by the College will be deemed to apply.

G. Terms of appropriate use for licensed content and software

Access, use, and reproduction of electronic journals, databases, and other resources made available through the Grinnell College Libraries are governed by contracts or license agreements between the College and publishers or third parties. In many cases, license agreements impose greater restrictions on use than does copyright law, and these terms may limit uses of non-copyrighted material. Members of the Grinnell College community are expected to make reasonable and good faith efforts to comply with the terms of these agreements.

In most cases, use of these resources outside Burling Library or the Science Library is limited to current students, faculty, and staff of the College. Others are welcome to use these resources within Burling and the Science Library.

In using licensed electronic resources, all users should:

- limit uses to non-commercial, educational, or personal research purposes;
- safeguard institutional access to resources by not sharing your network user name and password.

In general, users may:

- print, download or quote limited amounts of information, with proper attribution;
- copy an article for your personal use in teaching or research;
- create a link to a journal article on a publisher or aggregator Web site.

Users may not:

- systematically download large amounts of information (e.g. download all articles in a journal issue; engage in large-scale downloading from licensed resources to create large databases);
- post a copy of a published article to another computer (e.g., a Blackboard site, a departmental Web site, or an association or commercial Web site);
- distribute copies of material to individuals or groups outside Grinnell College, unless the license for the resource specifically allows it;
- sell or distribute articles to individuals, institutions, or organizations for commercial purposes.

Users should be aware that publishers monitor use levels of electronic resources to verify compliance with licensing agreements. Breach of license by a single user may enable the publisher to suspend the College's access without warning.

Users are accountable for respecting these guidelines as described in the College's *Academic Computer Use Policies* (2/1/04).

H. Music⁵

Public Performance

U.S. copyright law grants owners of copyrighted music the exclusive right to perform or authorize performances of their music publicly. Whenever copyright-protected music is used for purposes other than face-to-face teaching activities, covered by section 110 and the TEACH Act, those uses require permission from the music copyright owners.

Such uses include, but are not limited to:

- recorded background music in campus facilities through tapes, CDs, and videos
- music on College Internet or Intranet sites;
- music played by College-sponsored ensembles in College facilities;
- live concerts by guest performers in College facilities, promoted by the College itself;
- campus non-commercial radio broadcasts.

Grinnell College pays an annual licensing fee to each of the major organizations representing copyright owners for musical content (ASCAP, BMI, and SESAC), eliminating the need to contact copyright owners directly for permission to perform their copyrighted music. Through these licenses, the College is granted rights to perform the collective works of the affiliated songwriters, composers, and publishers represented by these organizations during the year of the license. Questions about these licenses and their terms of compliance should be addressed to Academic or Technical Support Assistants in the Bucksbaum Center for the Arts office.

⁵ Incorporates information from <http://www.bmi.com/licensing/broadcaster/public.asp>

Instruction

Most uses of lawfully owned copies of music in face-to-face teaching activities in the classroom or via dissemination through a digital network as an integral part of a class session are permitted provided certain conditions are met. See the discussions of section 110 of the Copyright Act and the TEACH Act found in part 2 of this policy.

I. Drama⁶

Public Performance

Dramatic works may not be publicly performed without permission, either in their entirety or in smaller portions, such as: excerpts, acts, scenes, monologues, etc. The rights that are needed to publicly perform a dramatic work that combines a musical work together with staging, dialogue, costuming, special lighting, choreography, etc. are referred to as grand performing rights. Grand performing rights are typically obtained from the creators of the works or their publishers. The rights to publicly perform a single piece of music from a musical play in a non-dramatic fashion are often referred to as small performing rights. Small performing rights are typically covered under the licensing arrangements for musical works with ASCAP, BMI, and SESAC, as described in the section on music above. To qualify as a non-dramatic performance, a piece of music taken from a musical play may not make use of any form of staging, choreography, etc., even if the use of any of these elements is not intended to represent any part of the original musical play. For example, creating your own dance steps to a piece of music from a musical play disqualifies the use as a non-dramatic use and requires permission for the grand performing rights. Questions about licensing for grand rights should be addressed to Academic or Technical Support Assistants in the Bucksbaum Center for the Arts office.

These organizations license grand performing rights to plays and musical theater works:

- Baker's Plays
- Broadway Play Publishing, Inc.
- Dramatists Play Service, Inc.
- Dramatic Publishing Co.
- Music Theatre International
- Pioneer Drama Service
- Popular Play Service
- The Rodgers & Hammerstein Organization
- Samuel French, Inc.
- Tams-Witmark Music Library

Instruction

Most uses of lawfully owned copies of dramatic works in face-to-face teaching activities in the classroom or via dissemination through a digital network as an integral part of a class session are

⁶ Adapted from <http://www.copyright.iupui.edu/permorg.htm>

permitted provided certain conditions are met. See the discussions of section 110 of the Copyright Act and the TEACH Act found in part 2 of this policy.

J. Video (Including video materials stored in any type of media format)⁷

Possession of a video does not confer the right to show it in public. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a video may be "performed." For example, rented videos usually bear a label that specifies "Home Use Only". Showings of such videos may not be advertised nor may they take place in large venues such as JRC 101, Harris Cinema, or classrooms. Advertised or public showings require explicit license, either associated with the video or arranged through a video rental service.

Most uses of lawfully owned or rented copies of video recordings in face-to-face teaching activities in the classroom or via dissemination through a digital network as an integral part of a class session are permitted provided certain conditions are met. See the discussions of section 110 of the Copyright Act and the TEACH Act found in part 2 of this policy. The relationship between the video and the course must be explicit. Videos, even in a face-to-face classroom setting, may not be used for entertainment or recreation, whatever their intellectual content.

J.1 Video use in dorm rooms and lounges

Dorm rooms and lounges are similar to homes. It is therefore acceptable to show videos labeled "Home Use Only" in those areas, provided no advertisements have been posted.

K. Recording and duplicating commercially produced or broadcast audio materials

K.1 Duplicating copyrighted non-music recordings

Cassettes or compact discs may only be copied if similar recordings are not available from a commercial source at a reasonable cost or if you have obtained special permission. Under defined circumstances, section 110 and the TEACH Act will cover digitizing and streaming recordings for instructional purposes. Fair use may also cover recording brief segments for instructional purposes. Format conversions of foreign language tapes without subtitles can be made for instructional purposes when the only available NTSC versions are subtitled.

K.2 Duplicating music recordings

Duplication of music recordings must generally follow the same rules and restrictions as duplication of non-music recordings above, except that a single copy may be made for use in the classroom to aid in aural instruction and examinations.

⁷ Adapted from: Wellesley College Copyright Policy, <http://www.wellesley.edu/Library/copyright.html>

K.3 Recording and duplicating commercially produced or broadcast video materials⁸

Grinnell College will record off-air television programming (including broadcast, cable retransmission of broadcast materials, and satellite TV) when faculty members request this service in advance. Recording cable TV or satellite programming may require permission.

Use of off-air recordings of commercial material for general educational classroom purposes must follow the four guidelines of fair use. There is a period, of fairly short duration, generally considered to be within 10 school days or 45 calendar days, in which the off-air recording can be used because it is more convenient or appropriate to the educational program. Beyond this period, the retention of the recording may become a substitute for purchasing the material or conflict with one of the other three criteria for measuring appropriateness under fair use. When such retention is in conflict with the fair use guidelines, retention is in violation of copyright. You must return the recording to the AV Center for erasure or disposal within 45 days of the recording.

In order to copy any videotaped program which you are not the producer or author of, you must have received written consent from the copyright holder for that program. This means the College cannot make a copy of a rental video or a program taped from television without written permission from the copyright holder. In most cases most video copyright holders will not provide this permission and will instead encourage you to purchase your own copy directly from them or from a store. Occasionally a copyright holder may give such permission if that program or tape is otherwise unavailable.

The Grinnell College AV Center or Listening Room will not make further copies of commercially produced or televised video materials without express written permission from the copyright holder. They can make copies of the following materials:

- Personal tapes which were videotaped by you. This includes personal camcorder tapes or any programs for which you are effectively the copyright holder.
- Classroom tapes recorded with Grinnell College AV equipment.
- Programs recorded or produced by Grinnell College.
- Programs for which you have express written permission from the copyright holder to duplicate. A copy of this permission must be provided to the Grinnell College AV Center or Listening Room when a duplication request is made.
- Tapes that fall under the guidelines of Section 108 of the copyright code:
 Section 108 (17 U.S.C. Section 108) allows libraries to make a copy of materials in their collections "solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price." This right of reproduction does not permit the making of backups.

In general, the Grinnell College AV Center or Listening Room may not duplicate any of the following materials:

⁸ Adapted from Earlham College copyright policy, <http://www.earlham.edu/policies/copyright/itam.htm>

- Commercially produced videocassettes. These include movies, television programs, or other programs.
- Tapes of programs which have been recorded from other tapes, DVDs, or laserdiscs, or from cable TV, broadcast television, or any other broadcast source.
- Non-commercial tapes for which the customer is not the producer or copyright holder. These may be demonstration tapes, corporate videos, music videos, etc.

L. Recording and duplicating public lectures, presentations, and performances⁹

Grinnell College will audiotape or videotape live performances on campus (such as lectures, speeches, and cultural or public events) for which performance permissions and music clearances have been obtained in advance and in writing. Grinnell will not audiotape or videotape any performance for which the producer or the performers do not have permission or the right to perform the copyrighted material except as permitted for archival and study purposes. Permission forms are available through the Grinnell College Audio-Visual Center and the Grinnell College Listening Room. A generic form is included as Appendix A4f of this policy.

M. Images of Art, Artifacts, Specimens¹⁰

Images of artifacts found on the World Wide Web, in a database, or in printed books might be protected by copyright and should not be reproduced indiscriminately even if the originals that are depicted are clearly in the public domain (e.g., a 15th-century painting or a 17th-century printing of a poem). Copyright to the images might be owned by the repository that hired the photographer (depending on their degree of originality), and professional courtesy may require that reproduction rights be requested in any case. Museums and other repositories of unique artifacts typically set special conditions for the reproduction of images of the objects they own. These repositories have an interest in assuring that copyright (if any) is respected, reproductions are faithful, and objects are accurately described. In addition, reproduction fees often provide a source of revenue.

Researchers who wish to publish an image of an object from a museum, archive, or library should request permission from the repository. Although guidelines vary from one repository to another, they usually specify how details or close-ups from the original may be handled, what kinds of changes in the image or its color are permitted, and how the item should be cited.

At least three forms of rights might apply to artifacts and works of art. A repository (or private collector) might own the object (manuscript, painting, artifact) and control the conditions under which original photographs of it may be taken. A photographer (or his/her employer) might own

⁹ Adapted from Earlham College copyright policy, <http://www.earlham.edu/policies/copyright/>

¹⁰ Adapted from Fyffe, R., and Walter, S. 2005. *The Digital Difference: Responsible Conduct of Research in a Networked World*. Lawrence, KS: University of Kansas Graduate School: <http://hdl.handle.net/1808/230>

the copyright to a photographed image of the original object, even if the object is in the public domain, if the photograph embodies a sufficient degree of originality. Copyright protection is more likely to apply to photographs of three-dimensional objects (sculptures and buildings, for example) than to two-dimensional works like paintings or drawings. Finally, an artist or other creator might own the copyright to the original work “fixed” in the object.

Locating the copyright owner or owner of other reproduction rights – whether textual or visual -- is not always straightforward. Researchers who need an image of an artifact or artwork to illustrate a publication or public lecture should start with the repository that owns the object. Other resources for locating rights holders include:

- The Artists Rights Society, a copyright, licensing, and monitoring organization for visual artists in the United States. It represents the intellectual property rights interests of over 30,000 visual artists (painters, sculptors, photographers, architects and others) and estates of visual artists from around the world. <http://www.arsny.com/index.html>
- The Copyright Clearance Center, which manages the rights to over 1.75 million works and represents more than 9,600 publishers and hundreds of thousands of authors and other creators. <http://www.copyright.com/>
- The WATCH File (Writers, Artists, and Their Copyright Holders), a database containing the names and addresses of copyright holders or contact persons for authors and artists whose archives are housed in libraries and archives in North America and the United Kingdom. <http://tyler.hrc.utexas.edu/index.cfm>

See also “Locating U.S. Copyright Holders:” <http://tyler.hrc.utexas.edu/us.cfm>

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**Grinnell College Copyright Policy
Appendices**

Appendix A1: Summary of Rights and Educational Exemptions

The owner of copyright has the *exclusive rights* to do and to authorize any of the following:

- reproduce the work in copies;
- prepare derivative works (adaptations) based upon the copyrighted work;
- distribute copies;
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the work publicly;
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the work publicly; and
- in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Limitations on Copyright Owners' Exclusive Rights

1. Only *original expressions* may be protected by copyright. Ideas, short phrases, and facts may not be copyrighted (though certain ideas may be patented and compilations of facts may be copyrighted).

2. Public Domain: Works whose copyright protection has *expired* are part of the public domain and may be used without permission. Works prepared by an employee of the *United States government* as part of official duties are not protected by copyright. See “Copyright Term and the Public Domain in the United States” at http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

3. First Sale (Section 109): The owner of a particular copy that is lawfully made or any person authorized by such owner is entitled to sell, loan, or otherwise dispose of the possession of that copy. First sale doctrine has also been interpreted to permit the leasing of some works (particularly videotapes). However, it explicitly disallows the commercial loan or leasing of software and musical works.

4. Special Classroom Rights (Section 110 and the TEACH Act)

The following are not infringements of copyright as provided by Section 110:

(a) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction;

(b) performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission.

III

Provided: All the uses covered in Section 110 must be of legally acquired copies of the materials. In addition, the materials must be displayed for educational reasons, a member of the class (either instructor or student) must be in charge of the display or the materials, and the materials should only be displayed to members of the class.

Digital transmission of performances and displays of copyright-protected works are permitted by the TEACH Act under certain conditions. The TEACH Act only applies to teachers and students at accredited, not-for-profit educational institutions and government agencies.

The exemptions cover:

- Performances of nondramatic literary works
- Performances of nondramatic musical works
- Performances of reasonable and *limited* portions of any other work
- Display of any other work in an *amount comparable to that typically displayed in a live classroom setting*.

The exemptions do not cover:

- Digital *educational works* including textbooks (i.e., works produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks)
- *Unlawful copies* (copies you know or reasonably should know were not lawfully made or acquired)

The exemptions only apply if:

- The display or performance is done *by, at the direction of, or under the actual supervision of an instructor, as an integral part of a class session* as part of systematic mediated instructional activities, and is directly related and of material assistance to the teaching content. That is, the uses of materials in the program must be "an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting."
- *Reception is limited to students enrolled* in the course, and "downstream" technological controls are instituted that reasonably *prevent retention* in accessible form for longer than a class session and unauthorized further dissemination in accessible form
- There is *no interference* with copyright holder's technological measures that prevent such retention and dissemination

Conversion of analog material to digital is permitted only if no digital version is available to the institution or the available digital version is technologically protected to prevent TEACH uses.

Use of the TEACH Act also requires that the institution promulgate copyright policies; provide accurate information about copyright; promote copyright compliance; and provide notice to students that the course materials may be copyrighted.

5. Reproduction by Libraries and Archives (Section 108)

Under certain circumstances libraries and archives may reproduce copyright-protected works. For a library to make copies under this exemption, the use must be noncommercial, the library must be open to the public, and the copy must include a copyright notice.

Up to three copies of an *unpublished* work may be created solely for purposes of preservation and security or for deposit for research use in another library or archives if (1) the copy reproduced is currently in the collections of the library or archives and (2) any such copy that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

Up to three copies of a *published* work may be created solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if (1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and (2) any such that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

A copy made be made from the collection of a library or archives where the *user* makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or a copy of a small part of any other copyrighted work, if (1) the copy becomes the property of the user, and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research; and (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.

An entire work, or a substantial part of it, may be copied from the collection of a library or archives where the *user* makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy of the copyrighted work cannot be obtained at a fair price, if the copy becomes the property of the user, and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research; and the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.

The rights of reproduction and distribution under Section 108 extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee (1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or (2) engages in the systematic reproduction or distribution of single or multiple copies.

Nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

6. Fair Use (Section 107)

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality 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.”

Appendix A2: Peter Hirtle, Copyright Term and the Public Domain in the United States

Source: Cornell University, http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm

Copyright Term and the Public Domain in the United States 1 January 2007		
UNPUBLISHED WORKS		
<i>Type of Work</i>	<i>Copyright Term</i>	<i>What was in the public domain in the U.S. as of 1 January 2007²</i>
Unpublished works	Life of the author + 70 years	Works from authors who died before 1937.
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	Works created before 1887.
Unpublished works created before 1978 that were published after 1977 but before 2003	Life of the author + 70 years or 31 December 2047, whichever is greater	Nothing. The soonest the works can enter the public domain is 1 January 2048
Unpublished works created before 1978 that were published after 31 December 2002	Life of the author + 70 years	Works of authors who died before 1937.
Unpublished works when the death date of the author is not known ²	120 years from date of creation ⁴	Works created before 1887. ⁴
WORKS PUBLISHED IN THE US		
<i>Date of Publication⁵</i>	<i>Conditions⁴</i>	<i>Copyright Term²</i>
Before 1923	None	In the public domain
1923 through 1977	Published without a copyright notice	In the public domain
1978 to 1 March 1989	Published without notice, and without subsequent registration	In the public domain
1978 to 1 March 1989	Published without notice, but with subsequent registration	70 years after the death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²
1923 through 1963	Published with notice but copyright was not renewed ²	In the public domain
1923 through 1963	Published with notice and the copyright was renewed ²	95 years after publication date ²
1964 through 1977	Published with notice	95 years after publication date ²
1978 to 1 March 1989	Published with notice	70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation ²

Appendix A3: Required Text for Library Photocopy Machines and Interlibrary Services

§ 201.14 Warnings of copyright for use by certain libraries and archives.

(a) *Definitions.* (1) A “Display Warning of Copyright” is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94—553. As required by those sections the “Display Warning of Copyright” is to be displayed at the place where orders for copies or phonorecords are accepted by certain libraries and archives.

(2) An “Order Warning of Copyright” is a notice under paragraphs (d) (2) and (e) (2) of section 108 of Title 17 of the United States Code as amended by Pub. L. 94—553. As required by those sections the “Order Warning of Copyright” is to be included on printed forms supplied by certain libraries and archives and used by their patrons for ordering copies or phonorecords.

(b) *Contents.* A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with paragraph (c) of this section:

NOTICE

WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

(c) *Form and Manner of Use.* (1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

Source: *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians* (Washington: US Copyright Office, 1998), p. 19-20.

Appendix A4a: TEACH Act Checklist

Source: Copyright Management Center, Indiana University-Purdue University, Indianapolis:
<http://www.copyright.iupui.edu/teachchecklistprint.pdf>
GAIN PERMISSION BEFORE DISTRIBUTING.

Checklist for Compliance with the TEACH Act

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

TEACH Act requirements that will likely fall within the duty of the *Instructor*:

- 1 The work to be transmitted may be any of the following:
 - A performance of a non-dramatic literary work; or
 - A performance of a non-dramatic musical work; or
 - A performance of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; or
 - A display in an amount comparable to that which is typically displayed in the course of a live classroom session.

- 2 The work to be transmitted may not be any of the following:
 - Marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity; or
 - A textbook, coursepack, or other material in any media which is typically purchased or acquired by students for their independent use and retention.

- 3 Any permitted performance or display must be both:
 - Made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities of the educational institution; and
 - Directly related and of material assistance to the teaching content of the transmission.

- 4 The institution does not know or have reason to believe that the copy of the work to be transmitted was not lawfully made or acquired.

- 5 If the work to be used has to be converted from print or another analog version to digital format, then both:
 - The amount of the work converted is no greater than the amount that can lawfully be used for the course; and

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There is no digital version of the work available to the institution or the digital version available to the institution has technological protection that prevents its lawful use for the course.

TEACH ACT requirements that will likely fall within the duty of the Institution:

6 The institution for which the work is transmitted is an accredited nonprofit educational institution.

7 The institution has instituted policies regarding copyright.

8 The institution has provided information materials to faculty, students, and relevant staff members that describe and promote US copyright laws.

9 The institution has provided notice to students that materials used in connection with the course may be subject to copyright protection.

10 The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.

11 Technological measures have been taken to reasonably prevent both:

Retention of the work in accessible form by students for longer than the class session; and

Unauthorized further dissemination of the work in accessible form by such recipients to others.

12 The institution has not engaged in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or dissemination of their works.

13 The work is stored on a system or network in a manner that is ordinarily not accessible to anyone other than anticipated recipients.

14 The copy of the work will only be maintained on the system or network in a manner ordinarily accessible for a period that is reasonably necessary to facilitate the transmissions for which it was made.

15 Any copies made for the purpose of transmitting the work are retained and solely used by the institution.

Appendix A4b: SPARC Author Addendum to Publication Agreement

SPARC AUTHOR’S ADDENDUM TO PUBLICATION AGREEMENT

THIS ADDENDUM hereby modifies and supplements the attached Publication Agreement concerning the following Article:

_____ (manuscript title)

_____ (journal name)

The parties to the Publication Agreement and to this Addendum are:

_____ (corresponding author), _____,
_____, _____,

_____ (individually, or if more than one author, collectively, the Author), and _____, (the Publisher).

The parties agree that wherever there is any conflict between this Addendum and the Publication Agreement, the provisions of this Addendum are paramount and the Publication Agreement shall be construed accordingly.

Notwithstanding any terms in the Publication Agreement to the contrary, AUTHOR and PUBLISHER agree as follows:

1. Author’s Retention of Rights. In addition to any rights under copyright retained by Author in the Publication Agreement, Author retains: (i) the rights to reproduce, distribute, publicly perform, and publicly display the Article in any medium for non-commercial purposes; (ii) the right to prepare derivative works from the Article; and (iii) the right to authorize others to make any non-commercial use of the Article so long as Author receives credit as author and the journal in which the Article has been published is cited as the source of first publication of the Article. For example, Author may make and distribute copies in the course of teaching and research and may post the Article on personal or institutional Web sites and in other openaccess digital repositories.

2. Publisher’s Additional Commitments. Publisher agrees to provide to Author within 14 days of first publication and at no charge an electronic copy of the published Article in Adobe Acrobat Portable Document Format (.pdf). The Security Settings for such copy shall be set to “No Security.”

3. Publisher’s Acceptance of this Addendum. Author requests that Publisher demonstrate acceptance of this Addendum by signing a copy and returning it to the Author. However, in the event that Publisher publishes the Article in the journal identified herein or in any other form without signing a copy of the Addendum, Publisher will be deemed to have assented to the terms of this Addendum.

AUTHOR(S): _____

PUBLISHER: _____

_____ (corresponding author on behalf of all authors)

_____ Date

_____ Date

SPARC (the Scholarly Publishing and Academic Resources Coalition) and the Association of Research Libraries (ARL) are not parties to this Addendum or to the Publication Agreement. SPARC and ARL make no warranty whatsoever in connection with the Article. SPARC and ARL will not be liable to Author or Publisher on any legal theory for any damages whatsoever, including without limitation any general, special, incidental or consequential damages arising in connection with this Addendum or the Publication Agreement. SPARC and ARL make no warranties regarding the information provided in this Addendum and disclaims liability for damages resulting from the use of this Addendum. This Addendum is provided on an “as-is” basis. No legal services are provided or intended to be provided in connection with this Addendum.

Appendix A4c: Cornell University “Checklist for Conducting a Fair Use Analysis Before Using Copyrighted Materials”

Source: Cornell University Copyright Information Center,
http://www.copyright.cornell.edu/policy/Fair_Use_Checklist.pdf

**CHECKLIST FOR CONDUCTING A FAIR USE ANALYSIS BEFORE USING
 COPYRIGHTED MATERIALS**

This checklist is a tool to assist you in applying the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright holder.¹ It is recommended that you complete and retain a copy of this form in connection with each "fair use" of a copyrighted work.

Name: _____ Date: _____

Class or Project: _____

Title of Copyrighted Work: _____

Portion to be used (e.g. pages): _____

Directions: Check all boxes that apply. For each of the four sections below, determine whether that factor favors or disfavors a finding of fair use. Where the factors favoring "fair use" outnumber the factors weighing against a finding of "fair use," reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work. Where the factors appear evenly split or you have questions about interpretation, please feel free to contact or Patricia McClary in the Office of University Counsel (5-5126; pam4@cornell.edu) or the Copyright Information Center (www.copyright.cornell.edu).

PURPOSE OF THE USE

Favoring Fair Use

Disfavoring Fair Use

- Educational
 - Teaching (including multiple copies for classroom use)
 - Research
 - Scholarship
 - Criticism
 - Comment
- Transformative or Productive use (changes the work to serve a new purpose)
- Nonprofit use
-

- Commercial, entertainment or other
- Non-transformative, verbatim/exact copy
- Profit-generating use
-

NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

Disfavoring Fair Use

- Factual, nonfiction, news
- Published work
-

- Creative (art, music, fiction), or consumable (workbooks, tests) work
- Unpublished work
-

¹In many cases, the University Library may have a license to use material. A fair use analysis does not have to be conducted where the desired use is permitted under the terms of an applicable license. Similarly, other provisions of the copyright law cover such matters as library copying, in-class use, and distance learning. This checklist is not needed where other specific statutory provisions authorize the activity.

AMOUNT COPIED

Favoring Fair Use

Disfavoring Fair Use

- Small quantity (e.g. a single chapter or journal article or other excerpt consisting of less than 10% of the work)
- Portion used is not central to entire work as a whole
- Amount is appropriate to education purpose

- Large portion or entire work
- Portion used is central or the "heart" of the work
- Includes more than necessary for education purpose

EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

Disfavoring Fair Use

- No significant effect on the market or potential market for the copyrighted work
- One or few copies made and/or distributed
- No longer in print; absence of licensing mechanism
- Restricted access (limited to students in a class or other appropriate group)
- One-time use, spontaneous use (no time to obtain permission)

- Cumulative effect of copying would be to substitute for purchase of the copyrighted work
- Numerous copies made and/or distributed
- Reasonably available licensing mechanism for obtaining permission to use the copyrighted work currently available e.g. CCC licensing or off-prints available
- Will be making it publicly available on the Web or using other means of broad dissemination
- Repeated or long-term use

Revised for use by Cornell University from the "Checklist for Fair Use," a project of the IUPUI Copyright Management Center, directed by Kenneth D. Crews, Associate Dean of the Faculties for Copyright Management; [see www.copyright.iupui.edu](http://www.copyright.iupui.edu).

Appendix A4d: Copying, Scanning, and e-Reserve Request With Fair Use Assessment Certification

Name: _____

Date Submitted: _____ Date Needed By: _____

Desired Name for Electronic File: _____

Special Instructions: _____

- Place on e-Reserve
- Save to my SECSHARE
- Email to me
- Print one copy for personal use on:
 - Regular paper
 - Glossy photo
 - Transparency
- Scan in color
- Scan in Black & White
- Scan in Grayscale

- File Type:
- JPG or GIF
 - PDF (Acrobat)
 - DOC (MS Word)
 - Other: _____

- Final Size:
- Same as original
 - Other: _____

For requests exceeding commonly accepted “amount and substantiality” guidelines* or if the source to be copied is itself a copy:

- I have made a reasonable and good-faith fair-use analysis, based on the four factors set forth in the fair-use provision of copyright law, and determined that the cumulative weight of the factors favors a finding of fair use in this case. (Please retain a written record, such as a checklist, documenting your decision-making process.)
- I affirm that permission has been granted by the copyright owner for further reproduction. (Please retain a written record of this permission.)
- I own the copyright.
- This work is in the public domain.

Requester’s signature: _____

Date: _____

* Amount and substantiality guidelines:

- Single copying for teachers: a single chapter (or article, short story, short essay, short poem, chart, graph, diagram, drawing, cartoon, or picture).
- Multiple copies for classroom use when there is too little time to request permission before use: a poem of less than 250 words on two pages or less, an article or story of less than 2,500 words, or a prose excerpt of up to 1,000 words or 10% of the work, whichever is less

Source: United States Copyright Office. *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians*. Washington, D.C.: U.S. Government Printing Office, 1995.

<http://www.copyright.gov/circs/circ21.pdf>

Appendix A4e: Permission Form for Use of Student Work

Adapted from: North Hennipin Community College, <http://www.nhcc.edu/myDocs/1000056/StudentCopying.pdf>

Instructions to Student: Carefully read the information below. If you have questions about the intended use of the student information or student creative work, please ask the faculty or staff member before signing. Your decision to grant permission or to deny permission will not have any impact on your grade in the related course/service program.

I, _____ [enter student’s name], pursuant to FERPA¹, hereby give my written consent and permission to Grinnell College faculty/staff member _____ [enter name of faculty/staff] to release and/or use my written assignments, essays, papers and other written materials created and/or prepared by me and submitted in connection with _____ [enter course identifier and name] or entitled [enter the specific name of paper or project or other creative work as necessary]

as part of the College’s internal self-evaluation and/or assessment procedures, or internal to the College’s efforts to improve teaching and learning effectiveness or experiences or to recognize student achievement. This includes permission to duplicate and/or disseminate a reasonable number of copies of my paper/work to other parties on campus.

_____ Please remove my name and identification number from any duplicated copies

_____ My name may be displayed on any duplicated copies

I understand that my written consent will remain in effect until I notify the Grinnell College employee/office named in this form, in writing, to cancel it.

I understand that the specific information referenced on this form may be released to third parties on campus with my consent/permission with the understanding that s/he will not release it to any parties external to Grinnell College.

_____ [student signature]

_____ [date]

¹ Family Educational Rights and Privacy Act (FERPA) of 1974 20 USC § 1232g and 34 CFR § 99 requires Grinnell College to obtain written consent from a student before releasing the educational records of that student to a third party and includes the student’s “creative work” developed in response to course requirements.

Appendix A4f: Permission Form for Use of Recordings of Campus Events

Presentations and performances by scholars or performing artists may be recorded by Grinnell College staff. These recordings are then archived in the Grinnell College Libraries' Listening Room. This permission form governing recording rights and further duplication or use of these recordings will be filed in the Listening Room. Any questions should be directed to the Listening Room Supervisor or the Collection Development Librarian.

I, _____, scholar, student, performer, or director of the
 _____ (ensemble), give the staff of Grinnell College permission
 to (check one or both) record videotape my/our presentation or performance given
 _____ (date) in Grinnell College's
 _____ (presentation of performance location.)

In addition, I grant the Grinnell College Libraries' Listening Room permission to make copies of this recording or videotape for requestors as noted below.

Please check all appropriate choices:

- _____ Presenters, performers, or ensemble members
 _____ Grinnell College student/faculty/staff person
 _____ Off-campus person
 _____ Educational use (e.g. examples for instructional Website)
 _____ Promotional use by the College (Website, compilation CD or DVD, etc.)

Signed _____ Date _____

Additional comments:

Appendix B. Commonly Cited Guidelines

B.1 *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians* (Washington: US Copyright Office, 1998). Includes "Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions With Respect to Books and Periodicals."
<http://www.copyright.gov/circs/circ21.pdf>.

B.2 *The Conference on Fair Use: An Interim Report to the Commissioner* (Washington: Working Group on Intellectual Property Rights of the Information Infrastructure Task Force, December 1996). <http://www.uspto.gov/web/offices/dcom/olia/confu/report.htm> and appendices: <http://www.uspto.gov/web/offices/dcom/olia/confu/appendix.htm>.

B.3. Harper, Georgia (University of Texas System) and Hoon, Peggy (North Carolina State University). *Applying Fair Use in the Development of Electronic Reserves Systems*. Endorsed by members of the Shared Legal Capability (American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, and Special Libraries Association). Washington, DC: Association of Research Libraries, November 2003. <http://www.arl.org/pp/ppcopyright/copyresources/applying.shtml>.

Appendix C: Sources of Additional Information on Copyright

Publications of the U.S. Copyright Office

Circular 21. Reproduction of Copyrighted Works by Librarians and Educators. Washington: U.S. Copyright Office, 1995. <http://www.copyright.gov/circs/circ21.pdf>

Circular 92. Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code. Washington: U.S. Copyright Office, June 2003. <http://www.copyright.gov/title17/circ92.pdf>

Books, Articles, and Official Reports

Bielefield, Arlene, and Lawrence Cheeseman. *Technology and Copyright Law: A Guidebook for the Library, Research, and Teaching Professions.* New York: Neal-Schuman, 1999.

Crews, Kenneth D. *Copyright Essentials for Librarians and Educators.* Chicago: American Library Association, 2000.

Crews, Kenneth D. "Fair Use and Higher Education: Are Guidelines the Answer?" *Academe* 83 (November/December 1997): p. 38-40. Also available at <http://www.copyright.iupui.edu/academ97.htm>

Working Group on Intellectual Property Rights of the Information Infrastructure Task Force. *The Conference on Fair Use: An Interim Report to the Commissioner.* Washington, December 1996: <http://www.uspto.gov/Web/offices/dcom/olia/confu/report.htm>; and Appendix: <http://www.uspto.gov/Web/offices/dcom/olia/confu/appendix.htm>.

Websites

Artists Rights Society: <http://www.arsny.com/index.html>

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

Copyright Management Center (Indiana University/Purdue University, Indianapolis): <http://www.copyright.iupui.edu/index.htm>

Harper, G. Copyright and Image Management: <http://www.utsystem.edu/OGC/IntellectualProperty/image.htm>

Scholarly Communication Center of the North Carolina State University Libraries, *Tutorial Series*: <http://www.lib.ncsu.edu/scc/tutorial/index.html>

Hoon, P. E. *The TEACH toolkit: An online resource for understanding copyright and distance education*: <http://www.lib.ncsu.edu/scc/legislative/teachkit/>

Legal Information Institute (Cornell University).
<http://www.law.cornell.edu/topics/copyright.html>

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

University of Texas System Digital Library, Copyright Crash Course:
<http://www.lib.utsystem.edu/copyright/>

The WATCH file: Writers, Artists, and Their Copyright Holders: <http://tyler.hrc.utexas.edu/>