



Policy on Use of Copyrighted Works for Education and Research

As an institution devoted to the creation, discovery, and dissemination of knowledge to serve the public, MSU is committed to complying with all applicable laws regarding intellectual property. That commitment includes the full exercise of the rights accorded to users of copyrighted works under federal copyright law.

It is the policy of Mississippi State University to facilitate the exercise in good faith of full fair use rights by faculty, librarians, and staff, in furtherance of their teaching, research, and service activities. To that end, the University will:

1. Inform and educate its faculty and staff about their Fair-Use rights and the application of the four factors for determining those rights set forth in 17 U.S.C. §107.
2. Develop and make available through appropriate units and media, effective resources concerning fair use and intellectual property laws generally and the application of fair use in specific situations. [See Appendix.]
3. Avoid adopting or supporting policies or agreements that in the opinion of the university would restrict fair use rights.

It is the responsibility of individual teachers and researchers to learn about copyright and reach informed conclusions, understanding that the primary responsibility for making appropriate decisions about fair use of copyrighted material rests with the individual faculty or staff member.

If faculty and staff act in good faith and consistent with university duties in the course and scope of their employment, MSU will offer protection in the event of an infringement allegation.

This policy explicitly applies to all faculty and staff of Mississippi State University.

Appendix Guidelines on Use of Copyrighted Works for Education and Research

Please note that the guidelines contained in this appendix are not intended to be a tutorial about copyright. Preparing and disseminating such materials will be an important part of implementing the proposed guidelines, and an educational program should follow adoption of these guidelines. This document does provide a general description of the applicability of the copyright law and the exemptions to the copyright law's general prohibition on copying.

Contents:

- I. Copyright Defined
- II. Copyright Protection, Permission, and Limits
- III. Fair Use
- IV. How to Analyze Your Use of Copyrighted Materials
- V. Frequently Asked Questions
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I. Copyright Defined

Copyright law protects “original works of authorship fixed in a tangible medium of expression” for a limited period (17 U.S.C. §102). Copyright protection includes, for instance, the legally secured right to publish and sell the substance and form of a literary, artistic or musical work. The federal copyright statute governs the reproduction of works of authorship. In general, works governed by copyright law include such traditional works of authorship as books, photographs, music, drama, video and sculpture, and also software, multimedia, and databases. Copyrighted works are protected regardless of the medium in which they are created or reproduced; thus, copyright extends to digital works and works transformed into a digital format.

Copyright cannot be held in perpetuity. As stated in the United States Constitution, Art. I, § 8, cl. 8: “The Congress shall have Power ... 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.” Thus, some previously protected works are now in the public domain. To find out if a work is in the public domain, visit the following chart:

When Works Pass Into the Public Domain, Lolly Gasaway
<http://www.unc.edu/~uncldg/public-d.htm>

Copyrighted works are not limited to those that bear a copyright notice. As a result of changes in copyright law, works published since March 1, 1989 need not bear a copyright notice to be protected under the statute.

The Copyright Law of the United States of America is contained in Title 17 of the *United States Code* and is available via the World Wide Web (WWW) at <http://lcweb.loc.gov/copyright/title17/>.

II. Copyright Protection, Permission, and Limits

- A. Protection: Copyright protects the following eight categories of works (17 U.S.C. §102):
1. Literary works
 2. Musical works, including any accompanying words
 3. Dramatic works, including any accompanying music
 4. Pantomimes and choreographic works
 5. Pictorial, graphic, and sculptural works
 6. Motion pictures and other audiovisual works
 7. Sound recordings
 8. Architectural works

B. Exclusive Rights: Copyright owners enjoy the following six exclusive rights (17 U.S.C. §106):

1. Reproduce
2. Distribute
3. Adapt
4. Perform
5. Display
6. Digitally perform sound recordings

C. Obtaining Permission:

1. Copyright Clearance Center, <http://www.copyright.com>
2. United States Copyright Office
 - i. To search records Jan. 1, 1978-present, <http://loc.gov/copyright/search>
 - ii. How to Investigate the Copyright Status of a Work, Circular 22, United States Copyright Office, <http://www.loc.gov/copyright/circs/circ22.html>

D. Exceptions and Limitations: Copyright law provides the following educational and research exceptions and limitations of the six exclusive rights of copyright owners:

1. Fair Use: 17 U.S.C. §107
 - i. See Section III of this document
2. Certain Library Activities: 17 U.S.C. §108
3. Certain Performances and Displays in Face-to-Face Teaching: 17 U.S.C. §110
 - i. Four requirements must be met before a performance of a work without the public performance rights is considered acceptable:
 - a. Instructors or pupils must present the performance or display the work.
 - b. The performance or display must occur in the course of face-to-face instruction of a nonprofit educational institution.
 - c. The performance or display must take place in a classroom or similar place devoted to instruction (including the library).
 - d. The performance or display must be of a legally acquired or legally copied work.

III. Fair Use: 17 U.S.C. §107

§107. Limitations on exclusive rights: Fair use¹

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 Section 107 was amended by the Visual Artists Rights Act of 1990, Pub. L. 101-650, 104 Stat. 5089, 5128, 5132, which struck out section 106 and inserted in lieu thereof sections 106 and 106A. Section 107 was also amended by the Act of Oct. 24, 1992, Pub. L. 102-492, 106 Stat. 3145, which added the last sentence.

- (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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The concept of fair use is necessarily somewhat vague when discussed in the abstract. Its application depends critically on the particular facts of the individual situation. Neither the case law nor the statutory law is sufficiently clear to allow one to unmistakably determine which uses are fair and which are not. However, you may find it helpful to refer to certain third party source materials.

- A group coordinated by the Consortium of College and University Multimedia Centers, CCUMC has prepared fair use guidelines for educational multimedia. <http://ccumc.org/copyright-matters/fair-use-guideline> These guidelines are sufficiently restrictive so as to assure fair use if followed, but they are so restrictive that they exclude uses that also may be considered fair use.
- Guidelines for Classroom Copying
<http://www.utsystem.edu/ogc/intellectualproperty/clasguid.htm>
These Guidelines for Classroom Copying were adopted after the 1976 Copyright Act and apply only to face-to-face teaching.
- Copyright & Fair Use, Stanford University Libraries
<http://fairuse.stanford.edu> Stanford University Libraries have compiled a site including links to primary materials (statutes, judicial opinions, etc.); current legislation, cases, and issues; resources on the Internet; and overviews of copyright law.
- Copyright Crash Course, University of Texas
<http://www.utsystem.edu/OGC/intellectualproperty/index.htm>
The Copyright Crash Course from the University of Texas provides one of the most comprehensive overviews of copyright as it pertains to institutions of higher education. The site is specifically tailored to the University of Texas, but there is much information here for everyone.
- Fair Use Guidelines, Indiana University
http://www.copyright.iupui.edu/fu_overview.htm
While specific to Indiana University, the information about various fair use guidelines presented here is useful to anyone having questions about fair use.
- Fair Use Checklist, Indiana University
<http://www.copyright.iupui.edu/checklist.htm>
This checklist offers guidance for determining fair use in specific situations.

The guidelines and resources, as well as other source material, are available through a variety of avenues, including through several Web sites: MSU Libraries Copyright & Fair Use (<http://library.msstate.edu/copyright/index.asp>) and the FindLaw Internet Legal Resources site

(<http://www.findlaw.com/01topics/23intellectprop/01copyright/index.html>). These sites assemble a wide range of materials related to the use of copyrighted material by individuals, libraries, and educational institutions.

Additionally, the following site is helpful for those needing information about the use of copyrighted materials in distance education situations:

- Copyright and Digital Distance Education, Office of Copyright, Library of Congress <http://www.copyright.gov/disted/>

IV. How to Analyze Your Use of Copyrighted Materials

Use the following four questions to analyze your use of copyrighted materials:

1. Permission to use: Can you get it?

If you can get permission to use copyrighted materials, do so. Permission assures that your use does not violate the owner's rights, provided you adhere to any stipulations the owner may set forth in granting permission. Be sure to keep a copy of the permission and its terms.

2. Permission to use: Are you unable to get it?

If you are unable to get permission because of time constraints, financial prohibitions or other concerns, determine whether or not the work is protected as follows:

- i. Does it fall within the eight protected categories?
- ii. Has the work fallen into the public domain? Check the following chart authored by Lolly Gasaway from the University of North Carolina: <http://www.unc.edu/~uncnlg/public-d.htm>.
- iii. Have you or the University agreed (i.e., in a contract) to restrict the use of the materials? If so, exceptions and fair use may be inapplicable and the agreement may control.

3. Exceptions: Do any apply?

If your work is protected, has NOT fallen into the public domain, and there are no restrictions agreed upon by you or the University, check to see if the following exceptions apply.

- i. Certain Library Activities: 17 U.S.C. §108
- ii. Certain Performances and Displays in Face-to-Face Teaching: 17 U.S.C. §110 (Discussed in Section II, D of these guidelines.)

4. Fair Use: Can you use it?

Only after you have exhausted steps 1-3 should you begin to determine if your use might fall under 17 U.S.C. §107, Fair Use. (Discussed in Section III of this document.)

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V. Frequently Asked Questions About the Proposed Guidelines

(Source: Indiana University guidelines on fair use, available at <http://www.copyright.iupui.edu/policyfaq.html>)

1. Why do we need copyright guidelines?

Copyright law increasingly affects scholarly pursuits. Not only are members of the university community creating new works that have copyright protection, but also the routine conduct of research and teaching regularly touches the set of rights that the law grants to the copyright owners of a vast range of protected works. The range of protected works encompasses text, images, software, video, Internet sites, and other media that instructors and researchers commonly deploy in furtherance of their academic objectives. The set of rights belonging to the copyright owner of each of those works includes the right to make copies, to distribute copies, to make “derivative works,” and to perform or display the work publicly. Such uses of protected works are common in the university setting, but they will not be unlawful “infringements” if they are fair use.

2. What are the origins of these guidelines?

The genesis of these guidelines occurred in a meeting of various officials of Mississippi State University and resulted in an ad hoc Copyright and Fair Use Guidelines Committee appointed by the Interim President in January 2002. The committee was charged to propose guidelines for MSU and a standard of fair use that was not unduly restrictive on the university’s essential teaching and research activities but would provide the faculty clear guidance for the use of such information.

3. What are the purposes and effects of these guidelines?

The central purpose of these guidelines is to assist members of the MSU community with the use of copyrighted materials in furtherance of the institution’s education and research mission and in accordance with a good-faith understanding of the principles of copyright and fair use. The intended effects of these guidelines are multifold. Readers should be able to make a more informed and responsible exercise of fair use, and they should be able to meet teaching and research needs without infringing the rights of copyright owners. While the guidelines call on individuals to learn about copyright and to reach informed conclusions, one purpose of the guidelines is to motivate decisions that allow faculty and others to keep their focus on serving the university mission.

4. If I do everything that these guidelines direct, will the university defend me?

If faculty and staff act in good faith and consistent with their university duties in the course and scope of their employment, MSU will offer protection in the event of an infringement allegation. Good faith increases the likelihood that activities are in fact fair use. Good faith reduces the risks of liability in the event of infringement. Good faith is also one important prerequisite to having the benefit of university assistance and support in the event that its faculty, staff, and librarians may face infringement allegations. Ultimately, good faith is best manifested through knowledge of, and reasonable application of, fair use.

5. Who is subject to these guidelines?

These guidelines explicitly apply to all faculty and staff of Mississippi State University. While the guidelines do not address the activities of students who are not also employed by the university, the guidance is applicable to students as well. While the university does not offer indemnification for students and is not legally responsible for the independent fair-use activities of students in pursuit of their study or projects, the university does expect its students to act responsibly and ethically, in a manner consistent with the law.

6. What do I need to know about fair use?

First and foremost, an underlying philosophy of these guidelines is that you will learn about fair use and help yourself reach responsible decisions. The MSU Libraries' Copyright Web site will make information available about fair use on its Web site: <http://library.msstate.edu/copyright/index.asp>.

7. Why not put further explanations about fair use in the text of the guidelines?

While the supporting and explanatory materials are important for assisting members of the university community to meet their responsibilities under these guidelines, elaborations on fair use ought not be included in the guidelines itself. Fair use is an area of the law that changes with court rulings, and that is adaptable to changing needs, technologies, and objectives. To put further details into the guidelines itself would tend to freeze the doctrine of fair use at a time when it is in continuous transition. Thus, the guidelines remain flexible to reflect changing needs and the dynamic nature of fair-use law. The guidelines also remain flexible to address the growing innovations of our teaching and research.

8. Who can help me with copyright decisions?

While these guidelines are intended to provide assistance in decisions about the use of copyrighted materials and while you may wish to seek advice of others more experienced, you must remember that the user bears the ultimate burden of staying within the law.

9. Who is responsible for making fair-use decisions?

The primary responsibility for decisions about fair use belongs to you, the user.

10. Why do the guidelines resist adoption of specific numbers or “guidelines” that explain fair use?

Fair use is not determined by specific “guidelines” that purport to quantify the boundaries of fair use. In an attempt to clarify the meaning of fair use for common situations, various private parties have negotiated “guidelines,” but those externally developed guidelines are often inappropriate for the realistic application of fair use to higher education. Such guidelines are too often an unduly narrow or rigid definition of fair use, and they usually impose additional restrictions and conditions that are not part of the law. Congress or the courts have read no such guidelines into the law, and the guidelines are not binding. Fair use must be determined according to the circumstances of each situation.

VI. Related Mississippi State University Policies

- Mississippi State University, Operating Guidelines and Procedure
<http://www.msstate.edu/dept/audit/mainindex.html>
- Mississippi State University has the following policies that deal with copyright issues:
 - 1976 Copyright Act as Related to Musical Performances
<http://www.msstate.edu/dept/audit/91203.html>
 - Use of Copyrighted Computer Software
<http://www.msstate.edu/dept/audit/3002.html>
 - Management of Copyrighted Site Licensed Computer Software
<http://www.msstate.edu/dept/audit/3003.html>
 - Computer Software
<http://www.its.msstate.edu/Services/Software/index.php>
 - Volume VII - Student Affairs, "Student Related" section OP 91.117: "Student Use of Computing Resources" touches on use of software by students.
 - Policy and Procedure Statement on Intellectual Property at Mississippi State University <http://www.msstate.edu/dept/audit/7601.html>

•The Mississippi Code

http://www.sos.state.ms.us/ed_pubs/MSCode/

•For employee copyright liability:

University employees enjoy the protection of the Tort Claims Act which provides in Section 11-46-7(2) of the Mississippi Code of 1972 annotated that "... no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties." Section 11-46-5(2) provides that "... an employee shall not be considered as acting within the course and scope of his employment ... if the employee's conduct constituted fraud, malice, libel slander, defamation or any criminal offense other than traffic violations." Finally, paragraph (3) of that section states "... it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment."

• University of Mississippi Law Library - Internet Resources: Mississippi

<http://library.law.olemiss.edu/library/state/ms.shtml> - STATUTES

Portions of these guidelines were taken with permission from and adapted from Indiana University, http://www.copyright.iupui.edu/iu_policies.htm, and Stanford University, <http://fairuse.stanford.edu>

Review

This OP will be reviewed every four years or sooner if needed by the Provost and Vice President for Academic Affairs.

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Provost and Vice President for Academic Affairs Date

/s/ Don Zant 02-04-08
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