

University Policy on Photocopying Copyrighted Materials

(Policy Statement on Photocopying Copyrighted Materials for Classroom and Research Use approved by the Board of Trustees, May 9, 1983.)

In December 1982, nine publishers commenced a lawsuit against the University and nine members of the faculty (as well as an off-campus copy shop) alleging that the photocopying and distribution of certain course materials, without permission of the copyright owners of the materials, violated the Copyright Act (17 U.S.C. Section 101 et seq., 90 Stat. 2541, Pub. L. 94-553). It has become increasingly clear that the subject of photocopying for classroom and research purposes is of significant concern to the faculty, who have inquired about issues such as when photocopying may be done without the consent of the copyright owner; when and how permission to photocopy should be obtained; how exposure to liability may be reduced; and under what circumstances the University will defend them against claims of copyright infringement arising out of photocopying for classroom and research use. To assist the faculty in resolving these issues, to facilitate compliance with the copyright laws, and as part of the settlement of the publishers' lawsuit, the University is issuing this Policy Statement.²

- I. The principles of the copyright law are designed to promote the creation, publication, and use of works of the intellect. These principles include both the exclusive rights of copyright owners to determine certain uses of their works (in not-for-profit as well as commercial contexts) and certain exceptions, including the doctrine of "fair use." These precepts are in the mutual interest of the university, author, and publisher communities and of the public.
- II. Under the copyright laws, certain photocopying of copyrighted works for educational purposes may take place without the permission of the copyrighted owner under the doctrine of "fair use" (presently set forth in Section 107 of the Copyright Act). This principle is subject to limitations, but neither the statute nor judicial decisions give specific practical guidance on what photocopying falls within fair use. To achieve for faculty greater certainty of procedure, to reduce risks of infringement or allegations thereof, and to maintain a desirable flexibility to accommodate specific needs, the following policies have been adopted by the University for use through December 31, 1985 (and thereafter, unless modified). If members of the faculty experience any problems or have suggestions, they are asked to communicate them to the Office of Legal Counsel.
 - A. The Guidelines set forth in Appendix I are to be used to determine whether or not the prior permission of the copyright owner is to be sought for photocopying for research and classroom use.³ If the proposed photocopying is not permitted under the Guidelines in Appendix I, permission to copy is to be sought. An explanation of how permissions may be sought and a procedure for furnishing to the administration information concerning the responses by copyright owners to requests for permission are set forth in Appendix II. After permission has been sought, copying should be undertaken only if permission has been granted and in accordance with the terms of the permission, except as provided in the next paragraph.
 - B. The doctrine of fair use may now or hereafter permit specific photocopying in certain situations, within limitations, beyond those specified in the Guidelines⁴ or those that might be agreed to by the copyright owner. In order to preserve the

ability of individual faculty members to utilize the doctrine of fair use in appropriate circumstances without incurring the risk of having personally to defend an action by a copyright owner who may disagree as to the limits of fair use, a faculty member who has sought permission to photocopy and has not received such permission (or has received permission contingent upon conditions that the faculty member considers inappropriate) may request a review of the matter by General Counsel of the University. If upon review the General Counsel determines that some or all of the proposed photocopying is permitted by the copyright law, the General Counsel will so advise the faculty member. In that event, should any such photocopying by the faculty member thereafter give rise to a claim of copyright infringement, the University will defend and indemnify the faculty member against any such claim in accordance with the provisions of the Board of Trustees policy on Legal Protection of Faculty (Faculty Handbook [1999 ed.], pp. 84-86).

- C. In the absence of the determination and advice by the General Counsel referred to in paragraph B, or in the event that permission has not been first requested by the faculty member as provided in paragraph A, no defense or indemnification by the University shall be provided to a faculty member whose photocopying gives rise to a claim of copyright infringement.

APPENDIX I: GUIDELINES

I. Single Copying for Teachers.

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. a chapter from a book;
- B. an article from a periodical or newspaper;
- C. a short story, short essay, or short poem, whether or not from a collective work;
- D. a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

II. Multiple Copies for Classroom Use.

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that

- A. the copying meets the tests of brevity and spontaneity as defined below, and
- B. meets the cumulative effect test as defined below, and
- C. each copy includes a notice of copyright.

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose: (a) Either a complete article, story, or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.

(Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or an unfinished prose paragraph.)

(iii) Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

(iv) “Special” works: Certain works in poetry, prose, or in “poetic prose” that often combine language with illustrations and that are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding, such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teacher and
- (ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- (i) The copying of the material is for only one course in the school in which the copies are made.
- (ii) Not more than one short poem, article, story, or essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

- III. Prohibitions in Regard to I and II Above. Notwithstanding any of the above, the following shall be prohibited.
- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.
 - B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests, and test booklets and answer sheets and like consumable material.
 - C. Copying shall not
 - (a) substitute for the purchase of books, publishers’ reprints, or periodicals;
 - (b) be directed by higher authority;
 - (c) be repeated with respect to the same item by the same teacher from term to term.
 - D. No charge shall be made to the student beyond the actual costs of the photocopying.

Agreed March 19, 1976,

Ad Hoc Committee on Copyright Law Revision: by Sheldon Elliott Steinbach
Author-Publisher Group, Authors Leagues of America: by Irwin Karp, Counsel
Association of American Publishers, Inc.: by Alexander C. Hoffman, Chairman,
Copyright Committee.

APPENDIX II: PERMISSIONS

A. How to Obtain Permission. When a proposed use of photocopied material requires a faculty member to request permission, communication of complete and accurate information to the copyright owner will facilitate the request. The Association of American Publishers suggests that the following information be included to expedite the process.

1. Title, author and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, chapters, and, if possible, a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, news-letter, etc.).
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photocopy, offset, typeset).

The request should be sent,⁵ together with a self-addressed return envelope, to the permissions department of the publisher in question. If the address of the publisher does not appear at the front of the material, it may be obtained from The Literary Marketplace (for books) or Ulrich's International Periodicals (for journals), both published by the R. R. Bowker Company. For purposes of proof, and to define the scope of the permission, it is important that the permission be in writing.

The process of considering permission requests requires time for the publisher to check the status and ownership of rights and related matters and to evaluate the request. It is advisable, therefore, to allow sufficient lead time. In some instances the publisher may assess a fee for permission, which may be passed on to students who receive copies of the photocopied material.

B. Gathering Data on Responses to Requests for Permission to Photocopy. In order to help assess the effect of this Policy Statement upon the faculty, it will be useful for the administration to compile data on responses by copyright owners. Each member of the faculty is therefore requested to forward a dated copy of each request for permission and a dated copy of each response to the Office of Legal Counsel, New York University, Elmer Holmes Bobst Library, 70 Washington Square South, 11th Floor, New York, NY 10012-1091.