

University of Wisconsin-Eau Claire
COPYRIGHT POLICY

I. Statement of Values: The University of Wisconsin-Eau Claire recognizes and respects intellectual property rights. As part of our mission to maintain the highest standards for ethical conduct, we are committed to fulfilling our moral and legal obligations with respect to the use of copyright-protected works. We are equally committed to the proper fair use of copyright-protected works, balancing the interests of ownership and access.

II. Background Information on U.S. Copyright Law:

A. The Original Law

Article I of the U.S. Constitution authorizes Congress to pass legislation “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.” On the basis of the Constitution, Congress enacted the U.S. Copyright Act (17 U.S.C. 101 et seq.), which grants the owner of a copyrighted work the exclusive rights to:

1. reproduce or copy the work
2. prepare derivative works based on the original work
3. distribute copies of the work for sale, rental or lease
4. perform or display the work publicly
5. perform sound recordings via a digital audio transmission

Copyright laws in the U.S. protect works even if they are not registered with the U.S. Copyright Office and even if they do not carry the copyright symbol (©). Copyrighted works may be in print, video, electronic or digital form and include, but are not limited to, books, magazines, newspapers, cartoons, trade journals, training materials, newsletters, printed articles from publications, TV and radio programs, videotapes, compact discs, DVD's, music performances, photographs, training materials, manuals, documentation, software programs, databases and World Wide Web pages. To be eligible for copyright protection, a work must be original and fixed in any tangible medium, including electronic and digital, and be one of the following eight categories of works:

1. literary works, including computer software
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. Fair Use

Using a work copyrighted by someone else requires the copyright owner's permission or the use must fall into one of the exceptions to the copyright owner's exclusive rights. In using works of others for educational purposes, the most commonly relied upon exception is "fair use." The fair use exception (17 U.S.C. 107) is a four-factor test that balances the rights of copyright owners in their creations against the public interest in the free exchange of ideas. The four factors are:

1. *The character of the use.* For example, nonprofit, personal or educational use are generally factors in favor of fair use, particularly if the use is for such things as criticism, commentary, news reporting, parody, or some other "transformative" use. However, any commercial use would usually favor requiring permission from the copyright owner.
2. *The nature of the work to be used.* Facts and published works tend to again weigh in favor of fair use. Imaginative and unpublished works are more likely to require permission to use.
3. *How much of the work is used.* This factor also requires some judgment. For example, a nonprofit educational institution copying of an entire article from a journal for students in a class would lean towards fair use; but a commercial copy shop would tip the balance towards obtaining permission for the same copying. Similarly, commercial publishers often have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier quotes.
4. *The effect of the use on the market for the work.* This really asks the question: "If the use was widespread, and the use was not fair, would the copyright owner be losing money?" In essence, could the use avoid the payment of royalties in an established permissions market?

Use of a copyrighted work need not satisfy all four factors to qualify as fair use; rather, the factors favoring fair use must outweigh the factors favoring obtaining permission.

C. Distance Education

The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 amended section 110 of the copyright law. It allows displays and performances of copyrighted works to be transmitted (distance education)

and used for instructional purposes, without permission of the copyright holder, if numerous conditions are met.

III. Ownership of Employee-Created Instructional Materials

Under the UW System Policy on Ownership of Copyrightable Instructional Materials, <http://www.uwsa.edu/fadmin/gapp/gapp27.htm> (GAPP 27), the faculty member usually owns all rights in his or her creations. For instance, a professor who creates a scholarly article in the course of research at a UW System institution, would ordinarily own the copyright in it. The institution may have an interest, however, if it contributed substantial institutional resources in the creation of the work. "Substantial" resources could include providing the creator with paid release time from his or her job, or allowing the employee exceptional access to specialized computer resources to create the work. In practice, when an author uses institutional resources to create a protected work, it is best to agree with the institution beforehand about ownership and control of the work. GAPP 27 includes a sample agreement to allocate rights and interests in copyrighted works between the institution and the employee author.

IV. University Obligations Regarding Copyright: The University of Wisconsin-Eau Claire sets forth these procedures for all faculty, staff and students to demonstrate our respect for intellectual property and commitment to proper fair use:

- A. The utilization of copyrighted work either must have the permission of the copyright owner, either directly or through a representative or meet the fair use exception or another recognized exception to the exclusive rights of the copyright owner.
- B. Faculty, staff and students must obtain permission from copyright holders directly, or their licensing representative, if the use does not fit within a recognized exception to the copyright owner's exclusive rights. An appendix to the UW System Policy on Ownership of Copyrightable Instructional Materials (GAPP 27) includes a sample letter (http://www.uwsa.edu/fadmin/gapp/gp27at_c.htm) requesting permission to use copyrighted materials. Alternatively, permission may be obtained from centralized clearinghouses for the use of various kinds of works:
 - Books or articles: Copyright Clearance Center
 - Musical works: ASCAP, BMI or SESAC
 - Motion Pictures: the Motion Picture Licensing Corporation
- C. The UW-Eau Claire library director is designated as the copyright officer to administer the campus copyright procedures. The copyright officer can help handle any special copyright issues, including questions regarding

fair use. You also may consult the UW System Office of General Counsel or your campus legal counsel.

- D. Faculty, staff and students are encouraged to educate their peers on copyright compliance and fair use. Faculty, staff or students who illegally duplicate copyrighted works may be subject to disciplinary, criminal and/or civil action.