



Ohio Administrative Code Rule 3352-7-09 Copyrighted materials.

Effective: August 18, 2017

(A) General policy.

(1) Wright state university is committed to compliance with the United States Copyright Revision Act of 1976, as amended, relating to the reproduction and use of copyrighted materials.

(2) Although Wright state university encourages its faculty and staff to engage in a wide variety of activities related to education, it respects the legal right to intellectual and creative property in all media. Such educational activities must therefore be performed within the bounds of copyright law. The university intends to adhere to the provisions of the U.S. Copyright Law (Title 17, United States Code, Section 101, et. seq.) and expects faculty and staff to adhere to these provisions as well.

(3) Wright state university does not support unauthorized duplication or use of protected works in any form. Employees who willfully disregard the copyright policy are in violation of university policy, do so at their own risk, and assume all liability. Although the university wishes to be supportive of faculty who adhere to the copyright policy, the office of attorney general of the state of Ohio is empowered solely to make any and all decisions concerning support of employees who may be sued for violation of copyright law.

(4) Where procedures are not clearly defined, or if guidance regarding questions of copyright ownership or infringement is needed, employees of Wright state university should contact the office of general counsel (937-775-2475).

(5) This policy is concerned solely with the use of copyrighted materials owned by third parties. It is not intended to address the ownership of copyrightable materials created by university employees. For information about the ownership of copyrighted works and other intellectual property, see the "Wright State University Policy and Procedures for Intellectual Property."

(B) The copyright law.



(1) Copyright ownership and subject matter:

(a) Copyright law gives an author the exclusive right to reproduce, sell, distribute, revise, display, perform, broadcast or record a work. Any reproduction or other use of a work either must be done with the permission of the copyright owner or must be permitted by an exception contained in the Copyright Act.

(b) Copyright protection extends to original works of authorship fixed in any tangible medium, including books, journals, newspapers, articles, audiovisual materials, computer programs, literary works, musical compositions, lyrics, graphic works, sculptures, other works or the visual arts, dramatic works, choreography, sound recordings and architectural works.

(c) Copyright protection does not cover works in the public domain, ideas, facts, mathematical formulas, measuring devices, blank forms, or works of the U.S. government. However, the mere fact that a work is factual in nature, or discuss mathematical formulas, does not mean that the work as a whole is unprotected.

(d) Duration of copyright.

(i) Under current U.S. law, copyright protection for a work remains in force throughout the life of the author and until the end of the seventieth year following his or her death. If a work is authored by more than one individual, copyright protection lasts until the end of the seventieth year following the death of the last surviving author.

(ii) In cases where the work constitutes a work for hire (i.e., a work where a company is considered the author, rather than an individual), copyright protection remains in effect until the end of the ninety-fifth year following the first publication, or until the end of the one hundred twentieth year following the creation, whichever expires first. The same durations apply to anonymous and pseudonymous works, unless the identity of one or more authors is revealed in copyright office records, in which case the durations set forth in this paragraph apply.

(e) Effect of copyright notice: At one time, works that were published in the United States without



copyright notice were considered dedicated to the public domain. However, with the passage of the Berne Convention Act of 1988, copyright notice is no longer required to obtain or retain copyright protection. Consequently, the better approach is to assume that a work is protected by copyright unless you have a clear basis on which to determine that it is not protected.

(2) Fair use.

The fair-use provision is presented as Section 107 of Title 17 of the United States Code. This section of the law allows limited reproduction and use of copyrighted materials without the copyright holder's permission and without payment of a fee. Fair use may allow for limited copying or other use of materials for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. If the limits of fair use are exceeded, permission of the copyright owner must be obtained to permit reproduction or other use of materials.

(a) Although one purpose of the fair use doctrine is to recognize that some copying and distribution of works in educational settings should be permitted without the permission of the copyright owner, it does not exempt all copying and use of protected works merely because they occur in an educational context. Instead, determining whether a particular use is a fair use involves a consideration of a number of factors, including the following:

(i) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.

(ii) The nature of the copyrighted work.

(iii) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

(iv) The effect of the use upon the potential market for or value of the copyrighted work.

(b) Recognizing that the fair use doctrine is often difficult to apply, guidelines have been developed to help educators determine whether a particular use is a fair use. These guidelines cover:



- (i) Copying printed materials for use in classrooms [see paragraphs (J)(1) to (J)(3) of this rule];
- (ii) Copying or using musical compositions in educational settings [see paragraphs (I)(1) to (I)(2) of this rule], and
- (iii) Recording broadcast programs for use in the classroom [see paragraph (C)(1) of this rule].
- (iv) Other exceptions: In addition to the uses permitted by fair use, the Copyright Act identifies several other specific uses which are allowed without obtaining specific permission from the copyright owner. These uses relate to the following:
 - (a) Copying by libraries for patron use [see paragraph (F)(4) of this rule];
 - (b) Copying by libraries as part of the interlibrary loan process [see paragraph (F)(5) of this rule], and
 - (c) Backup copies of computer software [see paragraph (E)(1) of this rule].

(C) Audio and video recordings.

(1) Off-air recordings.

These guidelines apply to individuals taping programs at home or at other informal sites for classroom use. These guidelines only pertain to the recording of programs that are transmitted without charge by television stations for reception by the general public. They do not pertain to the recording of programs broadcast on cable channels or satellite channels.

- (a) A broadcast program may be recorded off air simultaneously with broadcast transmissions (including simultaneous cable retransmission) and retained for a period not to exceed the first forty-five consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately.
- (b) Off-air recordings may be used once by individual teachers in the course of relevant teaching



activities and may be repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction during the first ten consecutive school days of the retention period. "School days" are school session days, not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions.

(c) Off-air recordings may only be requested and used by individual teachers and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

(d) A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions of the original recording.

(e) After the first ten consecutive school days, off-air recordings may be used up to the end of the retention period of forty-five consecutive calendar days, only for evaluating and determining whether or not to include the program in the teaching curriculum. It may not be used in the recording institution for student exhibition or any other non evaluation purpose without authorization.

(f) Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

(g) All copies of off-air recordings must include copyright notice on the broadcast program as recorded.

(h) Tapes recorded by the center for teaching and learning must be returned to the center for teaching and learning after the first ten consecutive school days. The center for teaching and learning will retain them for the remainder of the forty-five day limit and will assist departments in obtaining licensing or will erase accordingly.

(2) Transfers, duplication and editing.



Transfers of other formats (film, slides, etc.) to a videotape format, duplication of a videotape, and editing of videotapes require written permission from the copyright holder, unless the work is no longer protected by copyright.

(3) Teleconferencing.

Teleconferences will be received by satellite after proper clearances and permissions are obtained. Such teleconferences may be recorded for future use only with written permission from the copyright holder.

(4) TV production.

Programs produced by the Wright state university center for teaching and learning for live or taped broadcast, classroom use, or distribution must have clearances for all copyrighted materials included in these programs, as well as signed clearances from participants.

(5) Videotaping of performances or events.

(a) Videotaping of any performance on Wright state university campus will be done only with all clearances and permissions in writing. These clearances must state the intended use of the videotape (for example, classroom use, recruiting, and resumes).

(b) If a performance or event is considered public domain in all aspects (music, arrangements, script, etc.), the center for teaching and learning will videotape the performance or event.

(6) Use of audiovisual recordings in classrooms.

Instructors, students and guest lecturers may play motion pictures or other audiovisual works in the course of face-to-face teaching activities in a classroom or similar instructional setting, provided that the copy of the work is a lawfully-made copy (or that the person playing the recording did not know or has no reason to believe that the copy was not lawfully-made) and provided that viewing the work is part of the instructional program.



(D) Bookstores.

Employees are expected to adhere to copyright policy and guidelines in the duplication or printing of classroom materials and placement of such materials by the publications rotary administrator (Printing service) for commercial sale. Employees should contact printing service for copyright information regarding classroom materials.

(1) Copyright clearance.

(a) Faculty/departments should review the copyrighted content (if any) of class packets and submit the appropriate form along with the manuscript to the rotary administrator.

(b) The copyright coordinator in printing service must obtain written permission from the copyright holder before the material can be reproduced and subsequently sold.

(c) Acquisition of copyright permission is often a complex and time-consuming process; therefore, adequate time should be allowed for processing. Some permissions are granted immediately; others may take up to eight weeks or even longer. Further, the copyright owner is under no obligation to grant permission to use the work. Accordingly, faculty may wish to develop contingency plans in the event that permission cannot be obtained or cannot be obtained in a timely manner.

(E) Computer software.

Much computer software is protected by copyright, and is only licensed, not sold, to the user. For purposes of copyright, each version of software may be copyrighted separately, i.e., if the holder of copyright in the software develops and publishes a new release of the software, and the user wishes to use the new version, a separate license is usually required for each user. A purchaser of a software license does not acquire ownership of the software, but instead gains the right to use only the single purchased copy of the software.

(1) Backup copy. The copyright law permits the licensee to make an additional copy of the software for backup purposes, though any backup copy must be destroyed if the purchaser transfers the software to another owner. Where the university licenses the software, only the university, and not



the individual using the software, is entitled to make the backup copy.

(2) Prohibitions and areas of caution.

(a) In many instances, use of software may be restricted by the terms of the license. For example, use of software may be restricted to a particular computer at a particular site. In addition, use of the software may be limited to specific purposes. In these circumstances, permission of the copyright owner must be acquired if the purchaser wishes to use the software on a different computer at a different site, or for any other purpose not permitted by the license.

(b) In the case of some software, the university may purchase a site license, which will permit the use of the software on more than one computer at the university. It is usually in the best interest of the university to purchase site license when such a plan is available. However, the number of computers that the software can be used on is regulated by the license, and the mere fact that the university has purchased a site license does not mean that the software can be used on any computer on campus.

(c) Individual employees who acquire software for their personal use with regard to their duties at Wright state university must secure any necessary licenses, and must supply printed copies of such licenses to the university before installing the software on university computers. If the software is purchased by Wright state university, any licenses will be in the name of the institution. Employees may not make copies of software programs for associates, but they may transfer their use to a colleague after receiving permission from the university to do so. In doing so, the original user loses the right to continued use of the software and may not retain any copy or make any further use of the software.

(d) If the university supplies licensed software to students in the course of instruction in a classroom, then sufficient licenses must be held by the university for all computers in that classroom.

(e) If the university supplies licensed software to students in the course of instruction in other than a classroom situation, sufficient licenses must be held by the university for all students in the class and for the instructor.

(f) If more than one class is using licensed software during the same quarter, sufficient licenses must



be held by the university for all such classes.

(g) Shareware is easily identifiable through explicit statements within the software documentation, or identification is displayed on the computer screen. Unless these explicit statements identify the software as shareware, the user may assume that they may not be duplicated. Even if software is shareware, the copyright owner may have placed restrictions or limitation on the duplication and use of the software.

(h) The user should not assume that software not containing a copyright notice is in the public domain and may be copied freely. The user should consult with computing and telecommunications services to ensure that the software to be copied is in the public domain.

(F) University library.

(1) Section 108 of Title 17 of the United States Code of the copyright law identifies the conditions under which libraries may reproduce copyrighted works for their own use [see paragraph (F)(3) of this rule], to satisfy the needs of patrons [see paragraph (F)(4) of this rule], and for interlibrary loan purposes [refer to paragraph (F)(5) of this rule]. To qualify for these exemptions, all of the following conditions must be met:

(a) The library's collection must be open to the public, or otherwise available to persons doing research;

(b) The copying must be done without any direct or indirect commercial advantage;

(c) Any copies made must include the original notice of copyright or a statement that the work may be protected by copyright, and

(d) The library must not have reason to believe 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.

(2) Copyrighted textual works may be reproduced by or for faculty members for classroom use



without obtaining permission, provided that the circumstances conform to fair use as outlined in these guidelines [see paragraph (J) of this rule].

(3) Libraries are permitted to make copies for their own use, or for use by another library whose collection is open to the public, as follows:

(a) For published works, a library may make up to three copies of a particular work in order to replace a damaged, lost, stolen or obsolete copy in the library's own collection, provided that an unused replacement cannot be obtained through normal commercial channels at a fair price. (A copy is considered obsolete if it is a particular format and the device used to read that format is no longer manufactured or reasonably available.)

(b) For unpublished works, a library may make up to three copies of a particular work found in its own collection for the purpose of preservation or deposit with another library whose collection is open to the public.

(c) Libraries are permitted to make digital copies of works as replacement copies or for preservation, but such copies may not be made available to the public in digital form outside the premises of the library.

(4) Libraries are permitted to make copies for patron use as follows:

(a) The work to be copied must be in the collection of the library, and that collection must be open to the public.

(b) Only certain types of works can be copied for patron use. Generally, the only permissible works are textual works (books, articles, etc.). Section 108 of the Copyright Act does not allow libraries to make copies of musical works; pictorial, graphic or sculptural works (except for pictorial and graphic material that is part of a textual work, such as photographs or illustrations that are part of an article), or motion pictures or other audiovisual works. Copies of sound recordings can be made, as long as the recording is not of a musical work or is of a musical work no longer protected by copyright.

(c) The library must display, at the place where orders are accepted, and must include in its order



form, a notice concerning copyright restrictions, as follows:

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.

(d) The copy must become the property of the requestor, and the library must have no notice that it will be used for any purpose other than scholarship or research.

(e) Only a single copy of a work may be made for a given requestor.

(f) A library is permitted to make a copy of no more than one article or other contribution to a collection or periodical, or small part of any other copyrighted work, provided that the library is not engaging in the systematic reproduction and distribution of the entire work.

(g) Where a patron requests a copy of the entire work, a library is permitted to make a copy only if it has determined, after a reasonable investigation, that a copy of the work cannot be obtained at a fair price.

(5) Libraries also are permitted to request copies of materials from other libraries for their patrons, and make copies for use by patrons of other libraries, through the practice of interlibrary loans. Any copies made for interlibrary loan purposes must comply with the restrictions set forth in paragraph (F)(4) of this rule. In addition, for works not in the library's own collection, the library must abide by the following restrictions:



- (a) Any copies obtained through interlibrary loans must become the property of the patron who requested the material, and cannot be retained by the library as part of its collection.
- (b) The library may not request, within the same calendar year, more than five copies of any article or articles published in a particular periodical during the five years prior to the date of the request. The limitation of five copies is not tied to a particular article or issue, but to the periodical in general.
- (c) For works other than periodicals, the library may not request, within the same calendar year, more than five copies of or from a single work.
- (d) The library must retain records of all requests it has made, as well as records of fulfillment of these requests, until the end of the third calendar year following the year in which the request was made.
- (e) The library must send, along with any requests for copies sent to other libraries, a statement that the request is made in conformity with the guidelines in Section 108 of the Copyright Act.
- (f) The library may not fulfill requests from any other libraries unless the request is accompanied by a representation from the requesting library that the request is made in conformity with the guidelines in Section 108 of the Copyright Act.
- (6) A library may reproduce and lend a limited number of copies and excerpts from an audiovisual news program. "News program," in this context, refers to local, regional or national news programs, but not to documentary programs, magazine format programs, or other public affairs broadcasts.
- (7) During the last twenty years of the term of copyright in a work [see paragraph (B)(1)(d) of this rule] for a discussion of the duration of copyright protection], a library may reproduce, distribute, display or perform a copy of a work (including a digital copy), or portions thereof, for purposes of preservation, scholarship or research, provided that the library has determined, after a reasonable investigation, that:
- (a) The work was published by or with the authorization of the copyright owner;



(b) The work is not subject to normal commercial exploitation;

(c) A copy cannot be obtained at a reasonable price; and

(d) The copyright owner has not provided notice to the copyright office that the work is subject to normal commercial exploitation or that copies can be obtained at a reasonable price. The copyright office maintains a searchable database on its web site that can be used to determine whether this notice was filed for a particular work.

(8) A library and its employees are exempt from liability for the unsupervised use of card- and coin-operated photocopiers located on the premises, provided that such equipment displays a copyright warning notice.

(G) Media.

Wright state university media, including student media, have full rights to freedom of speech and of the press. However, media must adhere to legal restrictions, including the law of copyright. The following guidelines apply to university media's use of material under copyright:

(1) Print media may not reproduce copyrighted materials without written permission of the copyright owner, clear identification of the source, and, if applicable, copyrighted status of the material, printed in association with the material. This prohibition includes but is not limited to photo duplication of or other reproduction of lyrics from music, poetry, photographs, designs, art works, illustrations, and reports not commissioned by the media or documents prepared outside the direction of the media.

(2) Broadcast media must obtain appropriate licensing agreements prior to broadcast of material under copyright.

(3) Wright state university media may reproduce or otherwise use the following without obtaining permission:

(a) Works not protected by copyright or otherwise in the public domain;



(b) Original works commissioned by Wright state university media, provided that Wright state university media has acquired copyright in the work or a license to reproduce or use the work in the manner proposed; and,

(c) Reports composed for Wright state university media by employees of the Wright state university media.

(H) Center for teaching and learning.

The center for teaching and learning receives many requests that involve the reproduction of copyrighted materials. The center's policy is to evaluate each request in terms of the fair-use provisions of the copyright law, and it reserves the right to refuse to reproduce any materials that may result in a potential violation of the copyright law. The types of requests that the department will accept are listed in this paragraph. In all cases, the reproduction, in any form, of a copyrighted work by the center for teaching and learning may only be for the instructional, scholarly, or research-related activities of Wright state university.

(1) Copying or reproduction of any materials for which a letter of permission from the copyright holder is on file with the Center for teaching and learning, or for which the requester can supply written permission from the copyright owner.

(2) Copying or reproduction of any materials in any format where the work is demonstrably in the public domain.

(3) Copying or reproduction in any format of material created in its entirety by the requestor.

(4) Video recordings in classrooms, labs, or other campus facilities of faculty presentations (lectures, demonstrations, etc.), provided that the recording of the presentation does not include the recording of copyrighted material that might be included as part of the presentation.

(5) Reproduction from any data source onto a hard-copy unit, providing the data do not contain copyrighted material, and provided that the compilation of the data is not protected by copyright law.



(I) Musical compositions.

The following guidelines apply only to use or reproduction of a musical composition. They do not exempt completely uses of recorded music, which involve both a copyright in the musical composition and a copyright in the recording of the composition.

(1) Copyrighted musical compositions may be copied under the following circumstances:

(a) It is emergency copying to replace purchased copies that are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.

(b) Single or multiple copies of excerpts may be made for academic purposes other than performance, provided (i) the excerpts do not comprise a part of the whole that could constitute a performable unit, such as a section, movement or aria; (ii) such copying does not exceed ten per cent of the work and (iii) that no more than one copy per student is made.

(c) Printed copies that have been purchased may be edited or simplified, provided that the fundamental character of the work is not distorted or the lyrics altered or added.

(d) A single copy of recordings of performances by students may be made for evaluation purposes and may be retained by the institution or instructor.

(2) The following prohibitions apply to the use of musical compositions in educational settings:

(a) Copies shall not be made to create or replace or substitute for anthologies, compilations, or collective works.

(b) Copies shall not be made of or from works intended to be consumable in the course of study or in teaching, such as workbooks, exercises, standardized tests and answer sheets, and like material.

(c) Copies shall not be made for the purpose of performance, except for emergency copying as described in paragraph (I)(1)(a) of this rule.



(d) Copies shall not be made for the purpose of substituting for the purchase of music, except for emergency copying as described in paragraph (I)(1)(a) of this rule and for copies of excerpts as described in paragraph (I)(1)(b) of this rule.

(e) Copies shall not be made without inclusion of the copyright notice that appears on the printed copy.

(J) Copies of printed material for classroom use in nonprofit educational institutions.

(1) A single copy of any of the following materials may be made by or for an instructor upon request, to be used for scholarly research or for use in teaching or preparation for teaching.

(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 or periodical or newspaper.

(2) Multiple copies of printed works protected by copyright law may be made by or for an instructor for classroom use, provided that all of the following apply:

(a) The copies will be used in classroom teaching for only one course during one academic quarter.

(b) No more than one copy is made per student in a particular course.

(c) The copying meets the test of brevity:

(i) For poetry, a complete poem if less than two hundred fifty words and if printed on no more than two pages, or an excerpt from a longer poem, provided the excerpt is not more than two hundred fifty words, (These limits can be expanded to permit the completion of an unfinished line of a



poem.)

(ii) For prose (excluding special works as described in paragraph (J)(2)(c)(iv) of this rule), a complete article, story, or essay if less than twenty-five hundred words, or an excerpt from a longer prose work, provided that the excerpt is not more than one thousand words and not more than ten per cent of the work (unless the ten per cent threshold would limit the excerpt to less than five hundred words, in which case the excerpt can be five hundred words long). (These limits can be expanded to permit the completion of an unfinished paragraph.)

(iii) For illustrations, one chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

(iv) For special works (such as works in poetry, prose, or poetic prose, which combine language with illustrations and which fall short of twenty-five hundred words in their entirety), an excerpt comprising not more than two of the published pages of such special work and containing not more than ten per cent of the words found in the text thereof.

(d) The copying meets the test of spontaneity:

(i) It is at the instance and inspiration of the instructor.

(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.

(e) The copying meets the cumulative effect test:

(i) The copied material is used for only one course.

(ii) The copying does not involve more than one work (or two excerpts) from the same author, or more than three from the same collective work or periodical volume per class term. (This limitation is waived with respect to current news periodicals and newspapers, and current news sections of other periodicals.)



(iii) No more than nine instances of multiple copying occur per class term. (This limitation is waived with respect to current news periodicals and newspapers, and current news sections of other periodicals.)

(f) A notice of copyright is included on the first page of each photocopy.

(3) The following prohibitions apply to copying for classroom use:

(a) Copies shall not be made to create or to replace or to substitute for anthologies, compilations, or collective works.

(b) Copies shall not be made of or from works intended to be consumable in the course of study or teaching. These works include workbooks, exercises, standardized tests, and test booklets and answer sheets.

(c) Copies shall not be made to substitute for the purchase of books, publishers' reprints, or periodicals.

(d) Copying shall not be repeated with respect to the same item by the same teacher term to term.

(e) No charge shall be made to the student beyond the actual costs of the photocopying.

(f) Authority figures (e.g., teachers and supervisors) shall not direct students or employees under their supervision to perform actions that are in violation of copyright law or fair-use guidelines.

(K) Use of copyrighted works in distance learning.

Section 110(2) of the Copyright Act permits use of certain works in distance learning settings, including online courses, without obtaining permission from the copyright owner. A number of restrictions and regulations govern the types of works that can be used and how those works can be used and transmitted as part of the course. If an instructor wishes to use a work in a manner not permitted under the exception in Section 110(2) of the Copyright Act, the instructor must obtain



written permission from the copyright owner to include the material in the distance learning course.

(1) Types of works covered by the exception

(a) Except for those works identified in paragraph (K)(1)(b) of this rule, instructors can include performances of non-dramatic literary or musical works as part of a distance learning course. Instructors may also include performances or displays of reasonable and limited portions of all types of works (including dramatic works and audiovisual works), as part of a distance learning course, provided that the use of the material is in an amount comparable to that typically used in a live classroom session.

(b) Instructors cannot use works that are produced or marketed primarily for use in distance learning courses without first obtaining permission from the copyright owner. Further, instructors cannot include works such as textbooks, course packs or other works that are typically purchased by the student for use in the class. Finally, instructors cannot use or include works if their source copy is not a lawfully made and acquired copy.

(2) Manner of use.

(a) The performance or display of the work must be made by, at the direction of, or under the actual supervision of the instructor.

(b) The performance or display of the work must be an integral part of a discreet class session, and cannot be made generally available for access by students.

(c) The performance or display of the work must be directly related to the teaching content of the course.

(d) The performance or display must be analogous to that which might occur in a traditional classroom setting. Accordingly, instructors may not upload full works or excerpts from works to a web site for students to access throughout their enrollment in the course.

(3) Transmission of works.



(a) Transmission of the works must be made solely for reception by students officially enrolled in the course. Technological measures, such as password-protecting the material transmitted, must be used to prevent unauthorized access to the materials.

(b) Each transmission of the work must include a clear warning that materials included in the course may be subject to copyright protection.

(c) In the case of digital transmissions, including transmissions made via the Internet, technological measures must be used to prevent retention of the work by the recipients, further distribution or dissemination of the work by the recipients, or other use beyond use as part of the class session in which the work is incorporated. If the work was distributed by the copyright owner with restrictive codes, embedded management systems, or other technological safeguards designed to prevent such retention or unauthorized distribution, the university cannot take any steps that could reasonably interfere with those safeguards.

(4) Making copies of works for transmission.

(a) The university may make digital copies of works available in digital form for the purpose of including those copies in a distance learning course, provided that the digital copies are retained by the university and used solely for transmissions authorized under the exception in Section 110(2) of the Copyright Act, and that no further copies are made from the digital copy.

(b) The university may make digital copies of works not available in digital form for the purpose of including those copies in a distance learning course, provides that the university converts no more of the work into digital format as may be used in the course [see paragraph (K)(1)(a) of this rule], and provided that no digital version of the work is available for purchase, or any digital version available has technological measures that prevent its use in compliance with the guidelines outlined in this paragraph.

(5) Retention of copies of materials transmitted.

(a) The university may retain copies of the digital transmissions that comprise a distance learning



class or course, including copies of any copyrighted materials incorporated therein, provided that the copies of the transmissions are retained and used solely by the university.

(b) Any copies of transmissions retained by the university can only be used for further transmissions of the distance learning course in accordance with the guidelines set forth above. No copies can be made from the retained material, except for copies made and used in further distance education courses, provided those courses comply with the guidelines set forth in this paragraph.

(c) Copies of transmissions for a particular course cannot be retained by individual instructors. The copies of the transmissions must retain the property of and under the control of the university.

(L) Other online materials.

(1) The university is not responsible for the content of unofficial web sites or other online material hosted on the university's servers. To the extent that faculty, staff, students and other persons associated with Wright state university create unofficial web sites, the university expects that the persons responsible for the web site content will abide with applicable copyright laws regarding the use of copyrighted materials.

(2) The university also does not control and is not responsible for the content of any web sites created by faculty or graduate student employees where such web sites are tied to genuine teaching or research activities, except that such web sites cannot include copies of or access to instructional material that are or were required or recommended, within the preceding three years, for a course taught at Wright state by the faculty member or graduate student. Otherwise, the university expects that the faculty member or graduate student responsible for the web site content will abide with applicable copyright laws regarding the use of copyrighted materials.

(3) Notwithstanding the foregoing, the university may take down or disable access to any unofficial web sites, web sites maintained by faculty members or graduate student employees, or other online material, if the university receives a notice from a copyright owner, in compliance with Section 512 (c)(3) of the Copyright Act, that material on the web site infringes a copyrighted work. Wright state's actions in taking down such material are in compliance with the provisions of the Digital Millennium Copyright Act, as set forth on the copyright information page of the university's web site,



<http://wright.edu/web/copyright.html>.

- (a) If the university receives a proper notification, it will act expeditiously to remove or disable access to the allegedly-infringing material.
- (b) Upon taking such action, the university will notify the person associated with or responsible for the web site or other online posting that it has removed or disabled access to the site. This notice will be sent via e-mail to the e-mail address associated with person responsible for the web site.
- (c) The person who posted the material covered by the notification can file a counter-notification with the university, setting forth the reasons why the material should not be taken down. To be effective, the notice must comply with the following:
 - (i) It must be in writing, and must be submitted to "Larry Chan, General Counsel for Wright State University." The written notice may be submitted in person or by regular mail to the "Office of General Counsel (282 University Hall, Wright State University, Dayton OH 45435-0001)," or by electronic mail to larry.chan@wright.edu.
 - (ii) The notice must include the user's name, address and phone number.
 - (iii) The notice must identify the material that has been taken down, as well as the location where the material appeared before it was taken down.
 - (iv) The notice must include a statement, made by the user under penalty of perjury, that he or she has a good faith belief that the material was taken down as a result of a mistake or misidentification of the material to be removed.
 - (v) The notice must include a statement that the user consents to the jurisdiction of a federal district court to resolve the matter, and that the user will accept service of process from the complaining party or its agent.
 - (vi) The notice must be signed by the user, either physically or electronically.



(d) Upon receiving such notice from the user, the university will promptly forward a copy of the notice to the copyright owner who complained of the infringement, and will then replace or restore access to the material between the tenth and fourteenth business day following the date the notice is forwarded to the copyright owner, unless it receives further notice that the copyright owner has filed a court action against the user relating to the material in question.

(4) In the event that the university receives two genuine notifications of claims of infringement related to a particular faculty member or graduate student employee within a three-year period, the university will not permit that faculty member or graduate student employee to maintain a web site on the university's servers until both instances of claimed infringement are more than three years in the past.

(M) Technological protection measures.

Some copyright owners use technological protection measures, including passwords, restrictive codes, embedded management systems, and other devices, that are designed to prevent unauthorized access to a copyrighted work and/or unauthorized copying of a copyrighted work. The university and its employees shall not circumvent any technological protection measures designed to restrict access to a work, except in the following circumstances:

(1) The university and its employees may circumvent access control measures in order to make a good faith determination of whether to obtain authorized access to the work, provided that:

(a) The copy accessed is not retained longer than necessary to make such a determination;

(b) The copy accessed is not used for any purpose other than making the determination, and

(c) An identical copy of the work is not reasonably available in another form that can be reviewed without circumventing the access control measures.

(2) The university and its employees may circumvent access control measures on computer programs, provided the university has a license to use the computer program, that the measures are circumvented solely for the purpose of identifying and analyzing elements of the program necessary



to achieve interoperability with other programs, and that the steps taken are otherwise permissible under copyright law.

(N) File sharing using university resources.

University computers and its servers may not be used to engage in file sharing in violation of copyright law. File sharing is the sending or accessing of files on a remote computer, often involving file sharing applications such as KaZaA, Gnutella or Morpheus. While such programs have lawful purposes, use of these and other similar programs could involve illegal duplication or distribution when copyrighted works are involved.

(1) File sharing is permitted only when it is done in compliance with applicable copyright law. Accordingly, file sharing is permitted only when:

(a) The individual sharing the work is the owner of copyright in the work being shared (e.g., the work was created in its entirety by the individual);

(b) The owner of copyright in the work has given permission for the work to be copied and distributed through file sharing;

(c) The material shared is in the public domain; or

(d) Distribution of the material through file sharing falls within the fair use exception or another exception contained in the Copyright Act. However, the mere fact that the use of certain material in a classroom or research project may be fair use or fall within another exception does not necessarily mean that duplicating and transmitting the work through file sharing is also permitted under those exceptions.

(2) Some file sharing programs are set, by default, to transmit and share any files of a certain type on the computer whenever the computer is running. Anyone using these programs must either set the program not to share files in this manner, or must ensure that they have explicit permission from the copyright owners to share all of the files associated with the file sharing program.



(3) Unauthorized distribution/peer-to-peer file sharing may subject students to civil and criminal liabilities.

(a) A summary of penalties for violating federal copyright laws can be found at <http://www.copyright.gov/legislation/dmca.pdf> under section "Remedies."

(b) A summary of disciplinary actions students may be subject to can be found at <http://www.wright.edu/community-standards-and-student-conduct/code-of-student-conduct/nonacademic-violations-process>.

(c) A summary of disciplinary sanctions student may be subject to for a violation of university policy can be found at <http://www.wright.edu/community-standards-and-student-conduct/code-of-student-conduct/sanctions>.

Supporting documents:

Digital Millennium Copyright Act of 1998 <http://www.copyright.gov/legislation/dmca.pdf>

"Responsible Use of University Computing Resources" <http://www.wright.edu/wrightway/3002>

"Student Housing Network Acceptable Use Policy"

http://www.wright.edu/sites/default/files/page/attachements/acceptable_use_policy.pdf