

Copyright Policy for Earlham College¹

As an increasing number of questions have been raised about electronic documents and the ability to copy and distribute them, it became clear the institution needed to develop a statement on copyright. While informal policies existed the institution has never formally developed and approved a policy through faculty and/or administrative action. As an extension of Earlham's "Principles and Practices"² and consistent with its philosophy, this document is intended to serve as a set of guidelines for students, faculty and staff of the college in their uses of copyrighted materials.

The purpose of the document is to provide a basis for guiding practice. The writers understand that the field of copyright law and interpretation of Fair Use is in great flux and we will not be able to write a definitive policy that will have much staying power. Instead, we have written what might be called guidelines that will need to be revised frequently as the legal landscape changes. As the appendix to this statement indicates, we believe that an educational program will be very important follow-up to the implementation of the guidelines.

The appropriate place for such a policy to be developed is the Information Technology Policy Committee (ITPC) –a faculty committee that includes representation from all segments of the on-campus community. In the summer of 2003 Information Services (IS) explored possible shapes for such a policy. Because so many institutions have developed such statements we did not want to start from scratch. In our exploration of other statements we were attracted to that of Princeton University. We liked the general approach the statement took and the statement was in many ways consonant with our own practices. Staff of IS created a version of the Princeton document that more accurately represented Earlham's current informal policies, was consistent with the authors' understanding of current law, and used language that is locally appropriate (e.g., college instead of university). The approach is to develop a document that focuses on the fair use provisions recognized in the law and vigorously apply them to our circumstances. ITPC revised the document during the fall semester 2003. What follows is the latest version to result from that revision process. ITPC expects that there will be further changes as the document is reviewed broadly on the campus. This introduction will be revised as the process goes forward.

–Mickey White and Tom Kirk, July 2005

¹ We wish to acknowledge Princeton University's "Guidelines for Instructional Use of Copyrighted Electronic and Multimedia Materials" [<http://infoshare1.princeton.edu/reserves/libeitcopyright.html>] that was the starting point for the development of this policy. Some language from the Princeton University Policy has been retained in this document. This version approved by ITPC on December 8, 2004.

² Principles and Practices. Richmond, IN: Earlham College, 2000. [<http://www.earlham.edu/policies/p&p.html>] "The *Community Principles and Practices* describes principles and practices that guide those of us who live and work at Earlham College and who form its campus community: students, teaching and administrative faculty, and staff. As well, College trustees, and many alumni and former employees of the College, feeling themselves still members of the community, choose to embrace these principles.

Introduction: Instructional Use of Copyrighted Materials

The staff members of Information Services support the basic objectives of Earlham College's policy for use of Intellectual Property as stated in Computing Resources Acceptable Use Policy (<http://www.earlham.edu/ecs/html/policies/ecs-aup.html>).

The staff members will follow college policy and U.S. copyright law related to the use of electronic and multimedia materials. This includes the recording, reproducing, storing, and distribution of media-based instructional materials, such as: audio, video, and multimedia (combinations of data, text, sounds, and still and moving images that may also be modified interactively). All members of the college community are governed by these regulations.

Members of the college community who engage in any activity that infringes on copyright law may be subject to disciplinary action. Under circumstances involving repeated instances of infringement through the use of the College's computing network, such disciplinary action may include the termination or suspension of network privileges.

Members who are accused of infringement but who are also able to demonstrate to the college that they acted based on a reasonable application of this policy, Fair Use and copyright law will receive support from the college in defending themselves.

Further information about appropriate uses of college technology may be found at (<http://www.earlham.edu/ecs/html/policies/ecs-aup.html>). More information regarding copyright may be viewed at the United States Copyright Office web site.

Why Should I Read These Guidelines?

Individuals are liable for their own actions. The copyright law (Title 17, United States Code) sets strict limits on making copies of copyrighted works. Willfully exceeding these limits may subject the copier to liability for infringement with damages up to \$100,000 per work.

Earlham College is not required to defend an individual who knowingly fails to comply with the College's Policy on Copying, fair use guidelines, and any licenses that affect the rights to use others' works. Information Services will not permit the duplication or use of any material submitted which is known or suspected not to meet the requirements of the guidelines. The College expects those using the materials to be familiar with the guidelines and abide by them.

"Fair Use"

Information Services Staff will assist faculty in evaluating instructional materials to identify those that fall within the "fair use" clauses of the

copyright law. The "fair use" exemptions incorporated into the copyright law describe permitted educational uses of certain categories of copyrighted materials.

Copyright Law and Electronic Materials

In some areas, particularly relating to electronic and multimedia materials, copyright law and fair use guidelines are unclear. As expected, challenges to the copyright law are being debated. Information Services staff will make every effort to provide common-sense interpretations of the existing law and guidelines.

Copyright Permission

When use of copyrighted material falls outside of the "fair use" guidelines or is more than quoting small sections of a source, permission must be obtained from the copyright holder. Electronic material supplied by the library must include a copyright statement. Other materials must contain a documented copyright permission statement or a "fair use" disclaimer statement as detailed in the specific guidelines below. Obtaining such permission is usually possible, if sufficient lead-time is allowed, although a fee may be involved. The length of this process varies and can take from a few days to many weeks, or can last for unexplained lengthy periods.

General Information about Fair Use

Copyright law protects certain exclusive rights of copyright holders for a set period of time, including the following rights: copying their works, making derivative works, distributing their works, and performing their works.

These rights exist from the moment a work is created, whether or not a copyright notice appears on the work. It is always best to assume that the provisions of copyright law protect materials being used for instructional purposes, unless the materials are explicitly identified as belonging in the public domain. In using copyrighted materials for instructional purposes, even under "fair use" guidelines, it is always wise to acknowledge the copyright owner in a very clear way. Academic honesty and its negative, plagiarism, are not issues of fair use. Academic honesty requires citing others' ideas.*

Fair use: a limited exemption

Copyright law does allow limited copying, distribution, and display of copyrighted works without the author's permission, *under certain conditions* known as "fair use."

* For more information on plagiarism see Robert A. Harris. *The Plagiarism Handbook*. (Los Angeles: Pyczak Publisher, 2001).

The Fair Use Statute

The following is the full text of the fair use statute of the U. S. Copyright Act.

Section 107 of the Copyright Act of 1976. Limitations on exclusive rights:
Fair Use

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 in 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.

But note that the concept of "fair use" provides *limited* exemption, and does not encompass wholesale copying and distribution of copyrighted work for educational or any other purpose, without permission.

Copyright law does not specify the exact limitations of fair use. Instead, the law provides four interrelated standards or tests, which must be applied in each case to evaluate, whether the copying or distributing falls within the limited exemption of fair use.

Here are the four standards:

1. ***The purpose and character of the use.***
Duplicating and distributing selected portions of copyrighted materials for specific educational purposes falls within fair use.
2. ***The nature of the copyrighted work.***
The characteristics of the work help determine the application of fair use. For example, works built on facts and published materials may have a better claim to fair use than imaginative and unpublished works. Commercial audiovisual works and consumable "workbook" materials are subject to less fair use than many printed materials.
3. ***The amount and substantiality of the portion used in relation to the copyrighted work as a whole***
Copying extracts that are short relative to the whole work and distributing copyrighted segments that do not capture the "essence" of the work are more likely to be considered within fair use.
4. ***The effect of use on the potential market for or value of the work.***
If copying or distributing the work does not reduce sales of the work, then the use may be considered fair. Of the four standards, this is arguably the most important test for fair use.

Further material on Fair Use is available from the library, which maintains reference sources on copyright and its current legal status.

Currently the following Web sites provide up-to-date and useful information. (Additions and deletions will be made as these become inactive or new resources become available.)

- Fair-use guidelines from the Consortium for Educational Technology in University Systems (CETUS)
<http://www.cetus.org/fairindex.html>
- Copyright and fair-use guidelines from IUPUI
<http://www.copyright.iupui.edu/>
- Copyright and fair-use guidelines from Stanford
<http://fairuse.stanford.edu/>
- University of Texas System. Crash Course in Copyright
<http://www.utsystem.edu/ogc/IntellectualProperty/cprtindx.htm>
- U.S. Copyright Office
<http://www.copyright.gov/>
- Creative Commons (creating works in the Public Domain)
<http://creativecommons.org/learn/aboutus/>
- University System of Georgia
<http://www.usg.edu/admin/legal/copyright/>
- © (Copyright) Primer (University of Maryland)
<http://www-apps.umuc.edu/primer/enter.php>
Tutorial introduction to copyright for the higher education community which includes a quiz on major concepts.

Guidelines for Using Copyrighted Materials In an Instructional Setting

1. Copying

Following the "fair use" guidelines outlined above, segments of copyrighted electronic and multimedia materials may be captured, copied, digitized, transformed to another medium, or manipulated *for educational purposes only*, by members of the college community.

2. Acknowledgement

The holder of the copyright to each segment must be clearly and prominently acknowledged on or next to the digitized material, even when "fair use" guidelines are observed. (Citing a source from which a quotation is taken is considered proper acknowledgment.)

3. Incorporating materials into new works

Segments of material may be incorporated into studies and projects for instructional and scholarly purposes. Permission must be sought to use materials in works, other than small excerpts that are used as quotations, that are circulated beyond the original educational setting (e.g., a class, faculty seminar, some recognized group organized for educational purposes) or that may have commercial application.

4. Building digitized collections.

Collections of digitized images or multimedia segments that are designed for instructional or study purposes are limited under "fair use" to items directly related to teaching, learning, or research at Earlham.

5. Network access to digitized materials

Network access, including World Wide Web access, to Earlham

College-created digitized study collections that include copyrighted material, is restricted to the Earlham campus network and those authorized to use the network. Such digitized collections are accessible temporarily and for instructional purposes only by the group of Earlham students and faculty for whom the material is intended. These collections are removed at the end of the academic term in which they were being used. Prominent notice must be given that such study materials may not be downloaded, retained, printed, shared, or modified, except as needed temporarily for specific academic assignments.

6. Personal and course Web pages

Faculty and students who create Web pages should respect the rights of copyright holders. Fair use exemptions to copyright law apply when personal or course Web pages are used exclusively for educational purposes. This may be done by acknowledging sources, restricting access through course management software or some other password-protected mechanism, obtaining permission or license for use, or some combination of all of these.

Student Use of Electronic Materials: What You Can and Cannot Do

For students enrolled in a course at Earlham College, here are guidelines to follow before using the electronic or multimedia materials³ for study or for use in creating projects and writing papers.

Library Reserves / Electronic materials

The purpose of the Reserve Services of Lilly and Wildman libraries is to collect and maintain course-related materials for intensive student use. Both library-owned materials and those supplied by faculty members are processed for reserve by library staff. Policies on print reserves are below. The use of a course management system (e.g., Moodle) will provide the capability to provide controlled access to electronic forms of class material.

Copyright law

The U.S. copyright law grants to creators, such as authors and artists, the exclusive right to copy, distribute, and perform their work, as well as the right to create "derivative" works based on their original work.

But the law recognizes that scholarly work requires teachers, students, and researchers to reproduce and share pieces of original, copyrighted work for study and criticism. So, the law also allows a student to make limited use of copyrighted material for educational purposes. What follows provides guidelines for the legal use of electronic and multimedia materials:

³ Multimedia materials are combinations of data, texts, still images, animations, moving images, and sounds. Multimedia materials may be found on videotapes, audiotapes, and laserdiscs. Digitized multimedia materials may reside on floppy disks, CD-ROMs, digital tapes, and the hard disks of networked computer servers, including World Wide Web servers.

Use of electronic and multimedia materials

In the course of study one must assume that copyright law protects all electronic and multimedia materials encountered, unless there is a specific reason to believe that they are in the public domain, the copyright holders will permit the item's use, or they are public domain government publications.

Students may read, examine, watch, and listen to electronic and/or multimedia materials in the library, classrooms, Instructional Technology and Media (ITAM) Center, on public computers and video monitors, and on personal equipment (television sets, computers) attached or authenticated to use the campus network. In general students may copy assigned multimedia materials for private study and/or research. However they may not actively distribute it or passively make it available for use by others without written permission of the copyright holder.

Students may copy small segments of electronic or multimedia material, and transfer the segments to another medium (e.g. from videotape to digitized form), if they use the materials in a project or paper that has been assigned to meet the requirements of an Earlham College course or that is part of an independent work project or paper for which Earlham College credit is received. There is no legal definition of "small," but the segments copied should represent only a fraction of the original work. The work must be given due credit through a citation to the source.

Students may manipulate these small segments (that is, change their look or sound) only for purposes of study or criticism. They must clearly state what changes have been made to the original.

Students must obtain permission from the copyright holder(s) to make extensive use of copyrighted material beyond the fair use guidelines on page 3, or to share the material beyond the class, or to create a new work.

Library Reserve Guidelines

1. The guidelines used to determine what is included in the Library's reserves system will include a fair use analysis using the four standards on a case-by-case basis. The four standards will allow us to make balanced decisions about what material is appropriate for consideration in the project. Reserves will be limited to copies of single articles or chapters, or other small portions of a work or originals of an entire work. The four standards are reviewed in detail earlier in this policy and include:
 - a) The purpose and character of the use.
 - b) The nature of the copyrighted work
 - c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
 - d) The effect of use on the potential market for or value of the work.

2. When the material requested for reserve exceeds what might be permitted under fair use as defined on page 3, the faculty member should seek permission from the holder of the copyright or the Copyright Clearance Center to ensure compliance with the Copyright Law and retention of documentation.
3. Under fair use, students may make one copy for private study or research.
4. All copied material must carry the following statement: NOTICE: This material may be protected by copyright law. (Title 17 U.S. Code).

Instructional Technology & Media (ITAM)

Guideline #1: Audio and Video Materials

1. **Recording.** Instructional Technology & Media (ITAM) 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*. ITAM 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 ITAM.
2. **Reproducing.** ITAM may make copies of any video or audiotape that is in the public domain or that is provided directly by the copyright holder or with the written permission of the copyright holder. If the performers are not holders of the copyright to materials being performed, ITAM is obliged additionally to obtain the written permission of the performers to have their individual performances recorded and reproduced.

ITAM is generally unable to make copies of any work that can be legitimately purchased. This includes transferring film to videotape, if a videotape version is commercially available, and foreign standards conversions, if an identical converted version can be purchased. Standards conversions of foreign language tapes without subtitles can be made for instructional purposes when the only available NTSC versions are subtitled. Standards conversions of an instructor's personal tapes can be made for convenient use in instructional settings (defined as face-to-face instruction and individual) when equipment to play the program is not available with the following provisions: that the original tape is a legal copy and that the converted copy is erased at the end of the semester.

3. **Storing and distributing.** The college maintains ITAM for educational purposes; it is not a recreational facility. The materials in the collection can be viewed in the ITAM Center for instructional purposes by faculty members and by registered undergraduate and graduate students only.

The ITAM staff will add legally obtained or original tapes to the audio and videotape library, and will also place such tapes in the reserve collection.

ITAM collects videos and other multimedia primarily in support of the curriculum. All multimedia in the collection may be shown to class groups outside the ITAM Center in the course of face-to-face instruction; but tapes that are not cleared for public performance (which includes most tapes in ITAM, and all those purchased with a "home use only" restriction) cannot be circulated for public performance.

Audiotapes can sometimes be legally duplicated for limited distribution to students enrolled in courses using the taped material. Unenrolled language learners with a valid college ID may listen to audiotapes in the ITAM, but may not receive duplicated tapes for home study purposes.

Undocumented tapes cannot be included in the audio and videotape library. ITAM staff cannot accept a tape made on a home VCR for inclusion in the college collections, because legally that tape was made for personal use only. Tapes made by ITAM staff from off-air recording of US television programs must be removed from the video tape library after the 10-day use period has expired (see the section, Televised Materials). ITAM staff will explore the cost of obtaining the right to acquire and display any tape that a faculty member would like to include in the collection.

Rented videotapes can be placed on reserve and/or shown to groups of students during face-to-face instruction.

ITAM Guideline #2: Televised Materials

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

Individuals may not use the TV-VCR machines in the ITAM lab for the purpose of duplicating televised programs.

2. **Retaining and distributing commercial material.** Use of off-air recordings of commercial material for general educational classroom purposes must be tested using the four guidelines of fair use. There is some period, of fairly short duration, in which the off-air recording can be used because it is more convenient or appropriate to the educational program. However at some point 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.

Copyright and materials for people with disabilities

The Center for Academic Enrichment provides digital or audio recorded forms of texts required for college-related work or when a student or employee demonstrates ownership by presenting a print copy of the texts.

Copyright law provides specific rights to copy materials and distribute it to those with disabilities, for college related work. The person with disabilities is responsible for obtaining permission or ownership of the materials before any format conversion or duplication may begin.