



DEPARTMENT OF THE NAVY
UNITED STATES NAVAL ACADEMY
ANNAPOLIS, MARYLAND 21402

USNAINST 5870.1
2/EA/SJA
3 January 1984

USNA INSTRUCTION 5870.1

From: Superintendent

Subj: Use of Copyrighted Material

Ref: (a) Copyright Law, Title 17, United States Code

Encl: (1) Sample letter requesting permission to copy beyond fair use

1. Purpose. To provide a guideline regarding the use of copyrighted materials at the Naval Academy, which will facilitate compliance with reference (a) by all Naval Academy staff and faculty.

2. General Information

a. Subject matter and duration of copyright. Under United States copyright law, original works of authorship, published or unpublished, are automatically copyrighted when fixed in any tangible medium of expression, from which they can be perceived, reproduced or otherwise communicated either directly or with the aid of a mechanical device. Once conferred, copyright protection normally endures for the life of the author plus 50 years, or 75 years from first publication if the author cannot be identified. Original works of authorship which are typically subject to copyright law include literary works (works expressed in words or numbers), musical works, dramatic works, audiovisual works (including motion pictures), sound recordings, and pictorial, graphic, and sculptural works.

b. Rights of copyright owner. The copyright owner has the exclusive right to control:

- (1) Reproduction of the copyrighted work in copies or phonorecords.
- (2) Preparation of derivative works based on the copyrighted work.
- (3) Public distribution of copies or phonorecords of the copyrighted work by sale, gift, rental, or loan.
- (4) Public performance or display of the copyrighted work.

c. Expression vs. Idea. Copyright law protects only the literary, musical, graphic, or artistic form in which the author expressed his/her material. It does not restrict the use of ideas, processes, procedures, concepts, or principles expressed in the copyrighted work.

d. Copyright infringement. As a general proposition, copyrighted works may not be used without permission of the copyright owner. Unauthorized use of an original work of authorship is copyright infringement, unless the particular use is outside the rights of use granted to the copyright owner by the law, or unless covered by one of the complex and narrow exceptions provided by the copyright law. Any infringing user is liable for monetary damages, even the U. S. Government has no general exemption from copyright infringement liability.

e. Exceptions

(1) Employees of a library or archives, acting within the scope of their authority, are permitted to reproduce one copy or phonorecord of a work, if:

(a) The reproduction is made without the intention of receiving commercial advantage,

(b) The reproduction of the work includes a notice of copyright, and

(c) The reproduction is necessary either to replace a published work which has been damaged, or is deteriorating, lost or stolen and cannot be obtained at a fair price, or to preserve an unpublished work currently within the collection of the library.

(2) The primary exception to the copyright owner's exclusive right to control reproduction and distribution rights is the doctrine of fair use. Fair use, section 107 of the Copyright Act, permits copying without the owner's permission for purposes such as criticism, comment, scholarship, research, or teaching, and authorizes the making of multiple copies for classroom use.

(3) The determination whether a particular use is a "fair" use of a copyrighted work requires evaluation of the following four factors, each of equal importance:

(a) Purpose and character of use.

(b) Nature of the copyrighted work. In the context of classroom use, copying from textbooks and other materials prepared primarily for the educational market is less likely to be considered fair use than is copying from materials designed for general public distribution.

(c) Amount and substantiality of the material used in relation to the copyrighted work as a whole. Both the quantity (the amount copied) and the quality (the importance of the portion copied) of the use must be weighed.

(d) Effect of the use on the potential market for or value of the work.

3. Evaluating Fair Use. These guidelines are provided as an aid in determining whether or not the permission of the copyright owner should be sought prior to reproduction for research or classroom use. If the proposed reproduction is not permitted under these guidelines, permission to copy must be sought.

a. Books and periodicals

(1) 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.

(2) 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.

(3) Brevity

(a) Poetry: User may copy:

(1) A complete poem if less than 250 words and if printed on not more than two pages or,

(2) From a longer poem an excerpt of not more than 250 words.

(b) Prose: User may copy:

(1) A complete article, story, or essay of less than 2,500 words.

(2) An excerpt of not more than 1,000 words from any prose work or 10 per cent of the work, whichever is less, but in any event a minimum of 500 words.

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

(d) Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue, may be copied.

(e) "Special" works: The prose paragraph above notwithstanding, "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 per cent of the words found in the text thereof may be reproduced. Special works are certain adaptations in poetry, prose, or in "poetic prose" comprised of language combined with illustrations which are intended sometimes for children and, at other times, for a more general audience, usually containing less than 2,500 words in their entirety.

(4) Spontaneity

(a) The copying is at the instance and inspiration of the individual teacher, and

(b) 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.

(5) Cumulative Effect

(a) The copying of material is for only one course in the school in which the copies are made.

(b) Not more than one short poem, article, story, 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.

(c) There shall not be more than nine instances of such multiple copying for one course during the class term.

(d) The limitations stated in "b" and "c" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

(6) Additional Prohibitions

(a) Notwithstanding any of the above, the following prohibitions shall apply:

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works.

2. 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, test booklets, and answer sheets, and like consumable material.

3. Copying shall not be used as a substitute for the purchase of books, publishers' reprints, or periodicals, or be repeated with respect to the same item by the same teacher from term to term.

4. No charge shall be made to the student beyond the actual cost of the photocopying.

5. Photocopying from unpublished works without the permission of the author is also subject to copyright constraints. By law, copyright protection is automatically conferred on all unpublished works at the time they are created.

b. Music

(1) Permissible Uses:

(a) Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

(b) For academic purposes other than performance, multiple copies of excerpts of works may be made, provided the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. Nor shall the number of copies exceed one copy per pupil.

(c) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is,

1. Confirmed by the copyright proprietor to be out of print, or

2. Unavailable except in a larger work may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

(d) Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted, or the lyrics, if any, altered or lyrics added if none exist.

(e) A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

(f) A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

(2) The following are strictly prohibited:

(a) Copying to create or replace or substitute for anthologies, compilations, or collective works.

(b) Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, and like material.

(c) Copying for the purpose of performance, except as in paragraph 3b(1)(a).

(d) Copying for the purpose of substituting for the purchase of music, except as in paragraph 3b(1)(a) and (b).

(e) Copying without inclusion of the copyright notice which appears on the printed copy.

4. Requesting permission to copy beyond fair use

a. When a Naval Academy faculty/staff member concludes that permission of a copyright owner may be required prior to use of a copyrighted work,

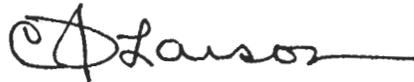
the individual will request the permission directly from the copyright owner or his/her agent. Unless the requesting individual is aware that free permission will not be granted, the initial request should ask for free permission. The request should include:

- (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) Intended use for the duplicated materials (and duration).
- (5) Form of distribution (classroom, newsletter, etc.).
- (6) Whether or not the material is to be sold.
- (7) Type of reprint (ditto, photography, offset, typeset).

b. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled THE LITERARY MARKETPLACE, published by the R. R. Bowker Company and available in the Nimitz Library. Enclosure (1) is a sample letter requesting permission to copy beyond fair use.

5. Action

a. Upon receipt of this instruction, all personnel shall be responsible for adherence to the guidelines as established in paragraphs 3 and 4.



C. R. LARSON

Distribution:

AA
CC

USNAINST 5870.1
3 January 1984

SAMPLE LETTER REQUESTING PERMISSION TO COPY BEYOND FAIR USE

Permission Department
Prentice Hall
1001 Parkplace Avenue
New York, New York 01010

Dear Staff:

I would like permission to copy, without charge, the following for continued use in classes in future semesters:

TITLE: The Writer's Handbook
COPYRIGHT: Prentice-Hall, Inc. 1976
AUTHOR: Alan B. Lefcowitz
MATERIAL TO BE DUPLICATED: Chapters 2 and 3 (photocopy enclosed)
NUMBER OF COPIES: 200
DISTRIBUTION: Students in my class. English Department will absorb photocopying cost.
TYPE OF REPRINT: Copier - Duplicator
USE: The chapters will be used as supplementary teaching material to augment introductory freshmen English course.

Sincerely,

Professor of

Enclosure (1)