

ACDEAN INSTRUCTION 5870.1A

From: Academic Dean & Provost
Subj: USE OF COPYRIGHTED MATERIAL
Ref: (a) Copyright Law, Title 17, United States Code
(b) SECNAVINST 5870.4A, COPYRIGHT
Encl: (1) "Fair Use" section of U.S. Copyright Law
(2) 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: a) facilitate compliance with Reference (a) by all Naval Academy faculty, staff, and midshipmen; and b) encourage faculty, staff, and midshipmen to take advantage of the "fair use" provisions of the copyright law and the associated guidelines.

The Naval Academy encourages the use of copyrighted material as an important, often essential, component of teaching and research. It is recognized that in many academic applications, copyrighted content is the raw material on which a specific intellectual endeavor depends. The intended use of the material should serve as the primary guide for its legitimate inclusion. In the educational setting, faculty and students should be encouraged to use selectively and creatively no more, and no less, of the material than is legitimate for their discipline or sub-discipline. Therefore, the emphasis in this document is on providing a "can do" rather than a "can't do" environment for faculty, students, and staff who wish to use copyrighted material for legitimate educational purposes.

To this end, this Instruction features a discussion of two aspects related to the **fair use** of copyrighted material: (1) from the actual copyright law, **four factors** to use in determining whether or not a proposed use is a fair one as provided by the law, and (2) generally accepted **guidelines** that have been drawn up by major groups representing both the producers and consumers of copyrighted material.

2. Cancellation. USNAINST 5870.1. This instruction is a complete revision; therefore, it should be read in its entirety.

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4. General Information about Copyright

a. Subject matter and duration of copyright. United States copyright law is set forth in Title 17, United States Code. Under this law, original works of authorship, published or unpublished, are automatically copyrighted when fixed in any tangible medium of expression, from which they can be perceived, reproduced or otherwise communicated either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 in works created in 1978 or later normally endures for the life of the author plus 70 years. If the author cannot be identified, the duration of copyright is 95 years from first publication or 120 years from the year of its creation, whichever expires first.¹

Original works of authorship that are typically subject to copyright law include literary works (expressed in words or numbers), musical works, dramatic works, audiovisual works (including motion pictures), sound recordings, and pictorial and graphic works--including digital representations of such forms communicated over the Internet or by other means.

b. Rights of copyright owner. Subject to the **exceptions** noted below, the copyright owner has the exclusive right to control:

- (1) Reproduction of the copyrighted work in copies.

(2) Preparation of derivative works based on the copyrighted work.

(3) Public distribution of copies 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 or her material. It does not restrict the use of ideas, processes, procedures, concepts, or principles expressed in the copyrighted work.

d. Copyright infringement. Any infringing user is liable for monetary damages; even the U.S. Government has no general exemption from copyright infringement liability.

But there are two broad categories of use that do not constitute infringement of copyright and do not require the user to seek permission from the copyright owner:

(1) the proposed use is outside the rights of use (specified above in 4b) granted to the copyright owner by the law; or, more commonly,

(2) the proposed use is covered by either a specific exception in the copyright law or by a more general exception under the copyright law, referred to in the statute as "fair use." (These exceptions are discussed in section 5, below.)

In determining what constitutes fair use, subsequent fair-use guidelines, the most recent of which are discussed in this instruction, should be consulted.

5. Making Copies Legitimately: Exceptions to Owners' Rights

a. Limitations on rights of copyright owner: summary. Ten sections of the Copyright Act provide for various limitations on the owner's exclusive right to make copies. Three of these sections, 107, 108, and 110 are especially pertinent here. Section 108 deals with libraries and archives. Section 110 deals with the performance or display of a work during face-to-face classroom teaching. Section 107 deals with the **primary** exception to the copyright owner's exclusive right: the **doctrine of fair use.**

b. Libraries and archives. (Section 108)

Employees of a library or archives, acting within the scope of their authority, are permitted to produce one copy, and in certain cases up to three copies.

c. Classroom teaching. (Section 110)

The display or performance must be in the course of classroom teaching, with the instructor present either in the classroom, or at least in the same building as the students. The copy which is displayed or performed must have been lawfully made.

d. Fair Use (Section 107)

(1) 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. Enclosure (1) of this Instruction reproduces this "fair use" section of the copyright law in its entirety. There is no simple test to determine what constitutes fair use.

(2) **According to the copyright law itself**, 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) The **purpose and character** of use, most especially whether the use is for educational purposes or for commercial purposes.

(b) The **nature** of the copyrighted work. Generally, copying nonfiction is more likely to be deemed fair use than is copying fiction.

(c) The **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) The **effect** of the use on the **potential market** for or value of the work.

(3) Before turning to these four factors, would-be users should first consider the applicability of **"guidelines"** for various types of materials; in many cases the guidelines will likely permit the desired copying.

6. Using the Guidelines to Evaluate Fair Use. Because very often there is no simple test to determine what constitutes fair use, several groups have sought to clarify fair use by adopting "guidelines" for use of copyrighted material. Such guidelines exist for books and periodicals, music, broadcast programming

(e.g., television), computer software, educational multimedia, distance learning, and digital images. The guidelines offered here are provided as one aid in determining whether or not the permission of the copyright owner should be sought prior to reproduction for research or classroom use. (The guidelines have been published in numerous venues; this Instruction relies heavily on the version appearing in Linda K. Enghagen, comp., Fair Use Guidelines for Educators [Washington, D. C.: National Education Association, 1997], portions of which appear here verbatim and are used by permission. A copy of the Enghagen booklet has been distributed to each academic department; additional copies are available in Nimitz Library.)

It is important to note that the limitations and conditions set forth in these guidelines **do not apply to works in the public domain** – such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions – or to works for which the individual or institution has obtained permission for the particular use. Also, **license agreements** may govern the uses of some works, and users should refer to the applicable license terms for guidance.

It also must be noted that **these guidelines express only the minimum standards** of educational fair use. Faculty or others wishing to copy more than the guidelines allow should rely on the **four-factor test for fair use** set forth above in **section 5d(2)**. If it is determined that neither the four-factor test nor the guidelines allow the specific copying desired, permission must be obtained from the copyright owner, usually either the publisher or the author, as per reference (b).

In short, faculty or others wishing to make copies of copyrighted materials **must secure permission** from the copyright owner, **if neither** the guidelines **nor** an interpretation of the

four factors will permit legitimate copying. Enclosure (2) is a sample letter requesting permission.

The remainder of this section, comprising some 35 pages, may be found on the USNA Nimitz Library website, at http://www.usna.edu/Library/landing/faculty/copyright_inst_guidelines_20090916.pdf. A copy will also be held on Reserve at the Library's Circulation Desk.

7. Requesting permission to copy beyond fair use

a. When a Naval Academy faculty or staff member, or a midshipman, concludes that permission of a copyright owner may be required prior to use of a copyrighted work, he or she 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, as per references (b) and (c). The request should include:

(1) Title, author and/or editor, edition of materials to be duplicated, and exact copyright notice(s) appearing on the work.

(2) Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material and the copyright page. Blanket permission to copy excerpts "as later determined" will not be requested.

(3) Number of copies to be made.

(4) Intended use for the duplicated materials (and

duration).

(5) Form of distribution, including form and recipients (classroom, newsletter, etc.).

(6) Whether or not the material is to be sold and contemplated fees or charges in connection with use or distribution of the material.

(7) Type of reprint (photography, offset, typeset).

(8) Dates, media, and intended audience of public performances or displays.

(9) Contemplated modifications of the work, if any.

b. The request will be for rights no greater than actually needed.

c. The request will be submitted in duplicate so the recipient may retain one copy and return the other granting permission.

d. The request will indicate that the copyright owner may designate the copyright notice and credit line to be used.

e. A self-addressed return envelope will be enclosed.

f. The letter should be on official United States Naval Academy letterhead.

g. 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 (2) is a sample letter requesting permission to copy beyond fair use.

8. Action

a. Upon receipt of this instruction, all personnel shall be responsible for adherence to the guidance established in Sections 4, 5, 6, and 7 of this instruction.



Distribution:

AA

CC

The “Fair-Use Statute”

107. 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. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include——

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

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

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

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

*“Title 17—Copyrights”, United States Code, 2000 Edition
(Washington, D. C., Government Printing Office, 2001), 628-629.

Enclosure (1)

Sample Letter to Copyright Owner Requesting Permission to Copy Beyond Fair Use
[Use USNA Letterhead]

Date _____

Material Permissions Department
Hypothetical Book Company
400 Main Street
City, State Zip Code

Dear Sir or Madam:

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

Title:	<i>Learning in College</i> , Second Edition
Copyright:	Hypothetical Book Company, 1980, 1982
Author:	John Doe
Material to be Duplicated:	Chapters 5, 6, and 15 (photocopy enclosed)
Number of Copies:	500
Distribution:	The material will be distributed to students in my classes, and they will pay only the cost of the photocopying or nothing at all.
Type of Reprint:	Photocopy
Use:	The chapters are to be used as supplementary teaching materials.

A copyright compliance statement and full source citation will be attached to the document at all times.

Please indicate your consent by signing the enclosed copy of this letter and returning it to me in the enclosed envelope.

Thank you for your assistance in serving the U.S. Naval Academy community.

Sincerely,

Faculty Member

PERMISSION. The above-requested permission is granted royalty-free. A notice of copyright and credit line is desired as follows:

I hereby certify that I have the authority to grant this permission.

Name _____ Title _____
(Please Print)

Signature _____ Date _____

Enclosure (2)

ENDNOTE

1. For more detail, see Cornell Copyright Information Center, “Copyright Term and Public Domain in the United States,” at http://www.copyright.cornell.edu/public_domain/.