



Faculty Senate Archives

Faculty Senate

Academic year 2009-2010

Volume XXIII

Agenda and Minutes of the Meeting of November 23, 2009

WICHITA STATE UNIVERSITY

FACULTY SENATE

AGENDA

MEETING NOTICE	Monday, November 23, 2009
	Room 126 CH, 3:30 p.m.

ORDER OF BUSINESS:

- I. Call of the Meeting to Order
- II. Informal Statements and Proposals
- III. Approval of the Minutes: Monday, October 26, 2009 --
<http://webs.wichita.edu/senate/m10-26-09.htm>
- IV. President's Report
- V. Committee Reports
- VI. Old Business: none
- VII. New Business
 - A. Copyright policy -- <http://webs.wichita.edu/senate/copyright%20policy.htm>
 - B. Proposed Copyright Guidelines --
<http://webs.wichita.edu/senate/copyright%20guidelines.htm>
- VIII. As May Arise

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**Wichita State University
Policies and Procedures Manual
Copyright Policy**

Initiating Authority: Vice-President and General Counsel

Accountability: Vice-President and General Counsel

Purpose: To state University policy relative to the use of copyrighted materials by faculty and staff of the University.

I. Preamble

The federal copyright law (Title 17, United States Code, Section 101, *et seq.*) protects creative works. It is appropriate, and required, that all members of the Wichita State University (WSU) community, including faculty, staff, students, and volunteers respect the proprietary rights of owners of copyrights and refrain from actions that constitute an infringement of copyright or other proprietary rights.

II. Policy Statement

1. All faculty and staff are expected to comply with the federal copyright law and obtain permission for use unless the use can fairly and reasonably be interpreted as “fair use.” Faculty, staff and employees are expected to review this policy and request further information and resources as needed that may be utilized for purposes of determining compliance with the federal copyright law.
2. Copyright Guidelines have been prepared by the University’s Office of General Counsel and can be located at [\(link\)](#) to assist members of the WSU community in complying with federal copyright law and to enable individuals to distinguish between permitted and prohibited uses of copyrighted materials. Members of the WSU community are expected to familiarize themselves with these guidelines and to fully comply with their requirements.
3. Faculty members and staff who willfully disregard this Copyright Policy place themselves individually at risk of legal action. In such cases, the University may refuse to defend the employee named in any litigation and personal liability may be incurred by the employee.
4. The University copy center located in WSU Copy and Print Services is available for copying services. All material to be copied by the WSU Copy and Print Services must be reviewed by the faculty or staff member requesting copy services for

copyright implications and the faculty or staff member must sign the Customer Statement of the Duplication of Copyrighted Written Works which can be located at (link) and is provided in the WSU Copy and Print Services office. Material may be presented for copying only where copying of the material can fairly and reasonably be considered fair use or where there is a University license to copy the material or where there is permission to copy, which shall be clearly set forth on the material to be copied.

5. The Office of the Vice-President and General Counsel is available for further guidance on specific questions regarding the application of the federal copyright law to specific factual scenarios.

Implementation

This policy shall be included in the *WSU Policies & Procedures Manual* and shared with appropriate constituencies of the University.

The Vice-President and General Counsel shall have primary responsibility for publication, dissemination and implementation of this University policy.

V. Effective Date

This policy will become effective on _____ .

REVIEW AND APPROVED:

Donald L. Beggs, President

Date

Proposed Copyright Guidelines

The Office of General Counsel provides these Copyright Guidelines for the WSU community (faculty, staff and students) to address the actions of those who wish to reproduce, alter, distribute, display or perform works that are protected by copyright. Copyright protection applies to a variety of creative works, printed materials, sound recordings, video recordings, visual artworks, computer software, and other works, including but not limited to some online internet postings. These Copyright Guidelines have been drafted to address issues related to these various media. They represent our best present legal advice regarding copyright issues in a university setting.

I. Introduction

The copyright law of the United States (Title 17, United States Code) provides legal protection for authors of original works, including literary, dramatic, musical, artistic, and other intellectual products. An author's copyright in a work arises at the moment the work is created. Publication is not essential for copyright protection. The copyright symbol (©) is also not required for copyright protection to occur, although use of the symbol does grant certain advantages to an author in the event of litigation. An author may transfer copyright ownership to another party. Section 106 of the copyright law grants a copyright owner the exclusive right to do and to authorize others to:

- **Reproduce** copies of the work.
- **Prepare derivative works** based on the copyrighted work.
- **Distribute** copies of the work by sale, rental, lease, or lending or by electronic means.
- **Publicly perform** literary, musical, dramatic or choreographic works, pantomimes and motion pictures and other audiovisual works.
- **Publicly display** literary, musical, dramatic or choreographic works, pantomimes and pictorial, graphic or sculptural works, including individual motion picture or audiovisual images.
- **Publicly perform** copyrights sound recordings by means of a digital audio transmission.

Instructors often seek to duplicate the written copyrighted works (protected works) of another to be used for professional purposes or to be disseminated in the classroom to further learning. Duplication can occur by physically copying the protected work or having the work transferred or retransferred into an electronic format. Classroom dissemination of protected

works can occur when the professor distributes actual copies of the work to students or enables the students to obtain electronic copies via email, or other electronic mediums. It is the responsibility of any faculty who duplicates or disseminates such protected works to comply with all applicable copyright laws and regulations. Simply providing a link to works located on the Internet is not in itself considered duplication and dissemination.

The general rule is that copyright holders have the exclusive right to their works. As such, instructors are generally prohibited from duplicating and/or disseminating the protected works of another without the copyright holder's permission. Instructors are encouraged to obtain the written permission of copyright holders before duplicating their protected work. Permission may be sought from the actual copyright holder or the Copyright Clearance Center at www.copyright.com or coursepacks may be purchased through www.xanedu.com which also provides copyright clearance services. Copyright holders may require a fee before they will grant the requesting instructor permission to duplicate their protected work. Often time, the author of the protected work is not the copyright holder so getting permission from the author may not be enough.

II. Exceptions

There are two recognized exceptions and another potential exception to the general rule that says copyright holders have the exclusive right to their works. The two exceptions are: 1) Works in the Public Domain and 2) the Fair Use Exception. The other potential exception applies to orphan works. These guidelines attempt to conservatively summarize these exceptions; however, more liberal applications of these exceptions may apply. You are encouraged to contact the Vice-President and General Counsel's Office for advice before you seek to duplicate protected work or if you have any questions or concerns about copyright infringement. The WSU Copy and Print Services may refuse to prepare copies of what it deems to be a potential copyright infringement.

A. Works in the Public Domain

Works that are considered in the "public domain" may be used (i.e., copied) freely. In addition, there are some scholarly publications such as journal articles that include a note offering to users the right to copy for "educational purposes." The following categories of publications are generally considered to be in the public domain; that is, their use is not protected by copyright law:

1. Works created **and** published, as a rule of thumb, about a century ago; [\[1\]](#)
2. Works where the creator has expressly disclaimed a copyright interest; and
3. Works created by the federal government, for example, data files from the 1990 Census.

B. Fair Use

Copyright law allows for the reasonable unauthorized use of an original work during the time of the author's temporary monopoly when the use is thought to advance the public welfare. This exception to copyright law is known as the "Fair Use Doctrine," and it is codified at Section 107 of the copyright law. Relying on the doctrine of fair use requires educating oneself about what fair use it. The following section set forth various ways of utilizing the fair use doctrine.

1. Safe Harbor Guidelines for Fair Use

There are no legal rules permitting the use of specific number of words, a certain number of musical notes, or percentages of a work. Whether a particular use qualifies as fair use depends on all the circumstances.

However, the following "Agreement on Guidelines for Classroom Copying" was authored by representatives of the educational community and publishers in 1976 and made part of the Congressional Record. The below is a reiteration of those guidelines that generally provide a safe harbor for those who are hesitant about interpreting and applying the fair use guidelines, however, it is NOT the law and should only be referenced for guidance. In some circumstances more extensive copying may qualify as "fair use" and in others, a paragraph, if it is significant enough to the work may NOT qualify as "fair use."

Agreement on Guidelines for Classroom Copying in Not for Profit Educational Institutions with Respect to Books and Periodicals

Single Copies 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 chapter from a book;

An article from a periodical or newspaper;

A short story, short essay or short poem, whether or not from a collective work; or

A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

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 the copying meets the following tests of **brevity**, **spontaneity**, and **cumulative effect**. Each copy must also include prominent notice that it is copyrighted material.

Brevity

Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words.

Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

Special Works: Certain works in poetry or prose or in “poetic prose,” which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

Spontaneity

The copying is at the instance and inspiration of the individual instructor, and 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.

Cumulative Effect

The copying of the material is for only one course in the school in which copies are made. Not more than one short poem, article, story, essay or two excerpts may be neither copies from the same author, nor more than three from the same collective work or periodical volume during a term.

There shall not be more than nine instances of such multiple copying for one course during a term. The latter two limitations listed do not apply to current newspapers and news periodicals. Copying shall not be used to create or replace anthologies, compilations or collective works. There shall be no copying of works intended to be consumable, such as workbooks, test booklets, etc. No charge shall be made to the student beyond the actual cost of copying. Copying shall not substitute for the purchase of books, reprints or periodicals; be directed by a higher authority, or be repeated with respect to the same item by the same teacher from term to term.

In short, multiple copying for classroom use, such in the case of material for coursepacks, must at a minimum:

- a. Be limited to single chapters, single articles from a journal issue, several charts, graphs or illustrations.
- b. Include any copyright notice on the original and any appropriate citations and attributions to the source.
- c. Have permission obtained for materials that will be used repeatedly by the same instructor for the same class.

2. Photocopying of Music

During debate on the changes made to copyright law in 1976, various representatives of the publishing industry and music teacher associations met and agreed on **minimum** guidelines for educational fair use on copying of music. Copying beyond the amount stated in the guidelines listed below may be justified by fair use after careful analysis, but seeking permission is always preferable.

Guidelines for Educational Use of Music

Permissible Uses

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. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that, 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.

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.

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 the individual teacher.

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.)

Prohibitions

Copying to create or replace or substitute for anthologies, compilation or collective works.

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

Copying for the purpose of performance, except as allowed above.

Copying for the purpose of substituting for the purchase of music, except as allowed above.

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

3. Fair Use as Set Forth in Case Law and the Statute

a. The doctrine of fair use.

The doctrine of “fair use,” embedded in Section 107 of the copyright law, addresses the needs of scholars and students by allowing use of copyrighted material without obtaining permission from the copyright owner in certain limited circumstances. **However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules.** To determine fair use, one must consider **ALL** of the following four factors:

- i. The **purpose and character** of the use, including whether the copied material will be for nonprofit, educational, or commercial use. Personal, nonprofit or educational usage tips the balance in favor of a finding of fair use. Commercial usage weighs against a finding of fair use. Criticism, commentary, news reporting and teaching (including multiple copies for one-time classroom use) are considered “core” fair uses, and thus weigh in favor of a finding of fair use. A work that parodies a

copyrighted work is considered a “transformative” work and generally this type of use tips the balance in favor of a finding of fair use.

- ii. The **nature** of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score, or a short story. Imaginative and unpublished works are granted greater protection than factual and published works.
- iii. The **amount, substantiality, or portion** used in relation to the copyrighted work. This factor requires consideration of the proportion of the larger work that is copied and used, and the significance of the copied portion.
- iv. The effect of the use on the **potential market** of the copyrighted work. For example, making 26 copies of worksheets from a math workbook instead of buying one for each student would probably have a negative effect on profits for the author of the workbook, and would not likely be considered fair use. On the other hand, a use that is clearly a fair use under the above three factors may be found to be a fair use even if its use could have a somewhat negative effect on the market. This factor is often granted great importance by the courts.

b. What constitutes fair use is a judgment call.

There is a tension between encouraging the academic community to exercise the fair use doctrine in order to maximize fair use of materials and exposing the university to liability for violation of copyright rights. If the faculty member or other employee chooses to rely on the fair use doctrine, she/he must do so with prudence and fair regard for all the elements of fair use. If a faculty member or other employee has any question about whether proposed copying falls within the fair use doctrine, he or she is encouraged to contact the Office of Vice-President and General Counsel.

The *WSU Policies and Procedures Manual Section 15.04* should be read in conjunction with these Guidelines.

C. Orphan Works

There is another potential exception to the general rule that says the copyright holder has the exclusive rights to the protected work. This potential exception applies to orphan works which are defined as works for which no copyright holder can be found, and thus for which permission to use these works cannot be obtained.

To be an orphan work, the instructor should be able to show that he/she has exercised good faith and due diligence in seeking permission from the copyright holder but could not determine the copyright holder. This exception has been endorsed by numerous scholars and legislatures. However, there is no law or court decision that directly applies this exception to the

general rule. Instructors are encouraged to contact the Office of the General Counsel for guidance before relying on this exception.

III. Licensed Works

The business model has changed dramatically in the past decade and many libraries and universities are now licensing works rather than purchasing them outright. For a current list of licensed works and products, contact a reference librarian.

By way of example, one of these licensed databases is LEXIS-NEXIS Academic Universe. LEXIS-NEXIS is a powerful research tool that contains a wealth of databases, including news, business, legal research (cases, codes, law review articles and more), medical (full text medical journal articles) and reference.

If you wish to use an article in class that is contained in the LEXIS-NEXIS database or many of the other databases, the licensing agreement allows you to make copies of the article and distribute the article to your students. In the same vein, such an article could also be posted on Electronic Reserve.

Different databases have different terms, conditions and features. For example, some databases contain academic journals and allow the faculty member to link directly to the article for educational purposes. Copyright notices must be maintained on any of the licensed materials. See a research librarian for assistance with all available licensed databases.

Reprinting of licensed materials has nothing to do with fair use or the public domain, but is instead based on the contract WSU has with the provider of the materials. If the article you wish to use is not in the licensed database, then you need to consider if the work is in the public domain, if use of the work would be a fair use, or if permission is necessary.

IV. Copyright Permission Checklist

When seeking to reproduce, prepare derivative works, distribute copies, publicly perform or publicly display material that may be protected under copyright law consider the following:

- Is the work in the public domain? If yes, then no permission is necessary.
- Is the work licensed through WSU for the particular use in question? If so, then permission is not necessary.
- If the work is not in the public domain or licensed, may fair use be invoked instead of obtaining permission?

- See Safe Harbor Guidelines for Classroom Copying and Guidelines for Educational Use of Music (Section II.B.1 and 2)

- If the use does not fit within safe harbor guidelines, then perform a fair use analysis, taking all four factors in from Section 107 of the copyright law as set forth in Section IV.B.3.
- If you think that fair use may be appropriate but you are not sure, consult with the Office of Vice-President and General Counsel.

If it is determined that you willfully disregarded you might not be defended by the University if you are the subject of an infringement claim. If the work is not in the public domain, not licensed by WSU, and fair use does not apply, then you must obtain permission from the copyright owner. A helpful resource can be found at

<http://www.knowyourcopyrights.org/resourcesfac/kycrbrochure.shtml>.

V. Library Reproduction

A. General Information

Libraries may reproduce copyrighted material under Section 108(a) of the copyright law however the rights of reproduction pursuant to this section of the copyright law are contingent on the following conditions:

1. Only one copy of a work can be made, unless otherwise specified in the subsections that follow.
 - a. The library reproduction and distribution must be without purpose of direct or indirect commercial advantage.
 - b. The collections must be open to the public or unaffiliated researchers in a specialized field.
 - c. All copies made under Section 108 must include the copyright as it appears on the original. If no notice was included on the original, then the library must include a legend that states that the work may be protected under copyright.
2. Subsections (b) and (c) of Section 108 of the copyright law provide limited exceptions permitting libraries to make up to three copies of a copyrighted work for preservation, deposit or replacement purposes, under certain circumstances. The work must already reside in the library making the reproduction, and if the work is reproduced in digital format, the library's right of distribution of that copy is limited to the library's physical premises. (§ 108(b)(2)).
3. The reproduction and distribution by a library or archive of the following works are allowed only for preservation and replacement purposes, unless the works listed below are published as parts of non-excluded works, then their copying is allowed under the broader provisions of 108.
 - a. Musical Work

- b. Pictorial, graphic or sculptural work, or
- c. Motion picture or other audiovisual work (other than audiovisual of news)

B. Library Copying for Archive Purposes

Federal copyright law, with respect to archiving is narrower than other library right of reproduction. In general, a library may make three copies of an **unpublished** work that exist in its collection if the purpose is preservation or security or for deposit for research use in another library that meets the three conditions listed in Section V.A. In the absence of a license to reproduce or permission from the author or copyright owner, if an unpublished work is reproduced in digital format, the library's right of distribution of the copy is limited to the library's physical premises.

A library may make three copies or a **published** work when an unused replacement cannot be obtained at a fair price, but only to replace a damaged, deteriorating, lost or stolen copy, or if the existing format of the copy has become obsolete, two additional conditions must be met for published works:

1. No copies can be made until the library first consults the copyright owner and standard trade sources to determine an unused copy cannot be purchased at a fair price; and
2. If a work is reproduced in digital format, the copy cannot be made available outside the premises of the library.

Source: Overview of the Libraries and Archives Exception in the Copyright Act: Background, History, and Meaning Authors: Mary Rasenberger and Chris Weston, April 2005

C. Patron Requests and Interlibrary Loans

Section 108 (d) of the copyright law allows the library to make one copy of a single article from a collection or a smaller part of a larger work at the request of a patron under the following conditions:

1. The work must be in the collection of the library (or another library),
2. The copy must become in the property of the requesting patron, and can't be added to the library's collection,
3. The library must have a notice that the copy will be used for anything other than research purposes, and
4. The library must display copyright warnings where requests are made, and attach the same warning to copy order forms.

Libraries may also make single copies of entire works, or large portions thereof, at the request of a patron under the four conditions above, with the additional following condition:

- The library must first consult the copyright owner standard trade sources to determine if a used or unused copy cannot be purchased at a fair price.

No systematic reproduction

Section 108 (g) places further limits upon the ability of the library to make copies for patrons. Systematic reproduction of works is forbidden.

D. Required Copyright Warnings

All WSU libraries must display prominently (at least 18 points in font size) the following notice at the place where orders for copies are accepted:

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 copy order if, in its judgment, fulfillment of the order would involve violation of copyright law.

The same text must be displayed (in font size no smaller than utilized throughout the form, and in no case smaller than 8 points) in a box located prominently on all order forms for copies, either on the front side of the form, or immediately adjacent to the space calling for the name and signature of the library patron. All fax and e-mail order forms must also incorporate the same notice.

Photocopy Machines/ Computer Terminals

Every photocopy machine on campus and all locations where CD-ROMS or on-line services are used must include effective signage incorporating the following text:

Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyright material. The person using the equipment is liable for any infringement. Note that this provision applies to both the downloading and uploading of documents to the Web.

E. Library Reserve Services

Copying for library reserve is governed by Section 107 of the copyright law, the fair use doctrine. Requests for one semester use of multiple copies of printed materials may be complied with as long as the requesting faculty member has exercised reasonable judgment in determining the number of copies needed for his/her students to read the material. Libraries should not retain reserve copies longer than one semester.

Copying of video recordings and slides may be more problematic. The fair use doctrine may be applied differently, depending upon the media in question. This is a judgment call for the librarians who are encouraged to seek advice from the Office of the General Counsel. Articles and other material that are submitted for reserve are considered the property of the instructor and will be returned at semester-end.

Electronic Reserves

Electronic reserve material requires special consideration. **See the Association of College and Research Libraries Statement on Fair Use and Electronic Reserves**

<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/statementfair.cfm>, as well as the

ARL Know Your Copy Rights brochure at

<http://www.ala.org/ala/acrl/acrlpubs/whitepapers/statementfair.cfm>, which contains a chart that list out the situations in which fair use applies to electronic reserves.

See also the **ARL FAQ on Uses in the Online Classroom,**

<http://www.knowyourcopyrights.org/resourcesfac/faq/online.shtml>

VI. Audiovisual materials

A. Films and Video: Classroom Use

Possession of a film or video does not confer the right to show the work to others outside of one's home. The copyright owner specifies at the time of purchase or rental, the circumstances which a film or video may be "performed" For example; videocassettes from a video rental outlet usually bear a label that specifies "Home Use Only." **However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.**

Section 110(1) of the federal copyright law specifies that the following is permitted:

Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made under this title and that the person responsible for the performance knew or had reason to believe was not lawfully made.

The copyright notice must be included and the relationship between the film or video and the course must be explicit. The film should not be shown for entertainment or recreation.

B. Films and video: Use Outside the Classroom

Public Performance of a video outside the classroom (for example at the RSC or other venues outside of a dorm room or in a similar small group) is governed by a different set of guidelines. In this situation, public performance licenses must be obtained.

C. Copying Television Programs Off the Air for Classroom Use

The following rules of thumb for copying television programs off the air for classroom use should be followed to ensure compliance with the air fair use doctrine. The rules below do not apply to programs shown on pay cable or pay TV.

These rules of thumb are reprinted with permission from “A Guide to Copyright Issues in Higher Education,” National Association of College and University Attorneys (NACUA), 4th Ed. (1997).

1. Off-the-air recordings may be used only once by individual teachers in the course of “time-shifting” the program in order for it to be seen in the class. After the program is seen once, it should be erased
2. The off-the-air recordings may be used only once by individual teachers in the course of “time-shifting” the program in order for it to be seen in the class. After the program is seen once, it should be erased.
3. 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 governing original recording.
4. Off-the-air recordings need not be used in their entirety, but they may not be altered from their original content. They may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

These rules of thumb are based on the 1979 “Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes,” contained in the House Report on Piracy and Counterfeiting Amendments (H.R. No. 494, 97th Cong., 1st Sess. At 8-9), as well as the more liberal Supreme Court decision in *Sony Corp. of America v. Universal City Studios*, 464 U.S. 417 (1984).

VI. Audiovisual Multimedia, Fair Use

Multimedia refers to the use of more than one of the categories of work protected by copyright law, such as a sound recording with pictorial or graphic images. As part of the CONFU process, **EDUCATIONAL MULTIMEDIA FAIR USE GUIDELINES** were produced in 1996. These guidelines apply to use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects created by educators or students for course-related work. Key

elements of the guidelines are summarized below. These guidelines are a starting point for those who are trying to apply the fair use doctrine to the creation of multimedia. There is no consensus among universities and publishers that the following guidelines are binding and the following fair use guidelines do not necessarily assure legal compliance. **Note that the fair use doctrine may also allow for greater usage than the guidelines.**

Educational Multimedia Fair Use Guidelines

Time

Teachers may use their project for a period of up to two years after first instructional use. Usage beyond that period requires permission for each copyrighted portion of the work. Students may use their projects in the course for which the project was created, and in their own portfolio as an example of their academic work.

Portion

Motion Media

Up to 10% or three minutes of a source, whichever is less, of a single copyrighted motion media work.

Text

Up to 10% or 1000 words of a source, whichever is less, of a single copyrighted work. An entire poem of less than 250 words, but no more than three poems by one poet, or five poems by different poets from any single anthology. In poems of greater length, up to 250 words, but no more than three excerpts by a single poet, or five excerpts by different poets from a single anthology.

Music, Lyrics and Music Video

Up to 10% but no more than 30 seconds of music and lyrics from a single musical work. Any alterations to a musical work shall not change the basic melody of the fundamental character of the work.

Illustrations, Photographs

A photograph or illustration may be used in its entirety. No more than five images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.

Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less, from a database or data table. A field entry is a specific item of information in a record of a database file. A cell entry is the intersection where a row and a column meet on a spreadsheet.

Copying and Distribution

The original and two use copies, one of which maybe placed on reserve. If a use copy is lost, stolen or damaged, an additional replacement copy may be made.

Copyright Notice

Though it can be difficult to determine what is copyright protected and what is in the public domain, the multimedia creator is responsible for adhering to copyright law. The opening screen of a program should contain the following notice: “certain material are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.” Credit the sources and display the copyright notice and copyright ownership information if shown in the original source. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher and place and date of publication). The copyright notice includes the word “Copyright” or the copyright symbol, the name of the copyright holder, and the year of first publication. Any alternations of copyrighted items must be noted.

VII. Computer software

There is both civil and criminal liability infringement of the rights of a software copyright owner. Copying software without permission may be a crime even if the person copying the software does not intend to violate the law. Copying an entire software program is highly unlikely to qualify as a “fair use.” WSU negotiates site licenses with software vendors whenever possible for software products that are selected for extensive use at the University, since these arrangements provide the WSU community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty.

Operate on the assumption that software is copyright protected even if the software has no copyright symbol. Do not make copies of software (other than for backup purposes) unless permission is sought from the copyright owner, the copying is permitted under a WSU licensing agreement, or the program is clearly “freeware.” Whether the software is transferred from the original to hard disk or to an archival compact disc, the backup copy is not to be used at all as long as the other copy is functional.

Libraries are permitted to lend software, but only for temporary use, not for copying. If the borrower transfers the software to a hard disk, the program must be deleted when the borrowed item is returned. A warning to copyright must be affixed to the packaging that contains the copy of the computer program which is the subject of a library loan to patrons, by means of a label durable attached to the copies or the container for the copies. The form of the copyright notice is as follows:

NOTICE: Warning of Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis

and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, except as permitted by Title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

VIII. Performances

Definitions:

Non-dramatic excludes audiovisual works but includes works such as poetry, short story, and non-dramatic musical works. Musical compositions are considered non-dramatic musical works.

Dramatic works includes all audiovisual works such as films, videos, opera, music videos, and musicals.

To “**perform**” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A. In the Classroom

Section 110 of the copyright law is clear that the scope of performance rights in the classroom is very broad. The only limitation is that a legitimate copy must be used.

B. Transmission

When discussing the use of the web to augment the delivery of classroom materials, or in connection with distance education, all portion of a non-dramatic work may be transmitted as long as the display is an integral part of the class and teaching content, the transmission is solely for students in the class, and technological measures are implemented that prevent retention of the work accessible from and prevent further dissemination of the work. With respect to dramatic works, only a reasonable portion of the work may be transmitted. Section 110 was amended by the TEACH Act which imposes a number of limitation upon transmissions of performances.

The TEACH Act modifies section 110(2) of the copyright act which pertains to transmissions of performances and displays of copyrighted works. To transmit a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent. Therefore, any time the performance or display of a copyrighted work is transmitted, TEACH is potentially implicated. This would include “distance education courses”, “traditional” courses with an online component, cable TV courses, and so forth.

C. Public Performances Outside the Classroom

Copyright permission must be obtained for all public performances of dramatic literary or musical works that are not in the public domain and that are not part of the classroom instruction.

Note that the fair use may still apply in any of the above contexts. An example might be showing a film on campus (but not in the classroom) when the film to be shown is an orphan work and the copyright owner cannot be determined. In this instance, fair use is likely to apply. See the four factor test codified at Section 107 of the copyright law and set forth in Section II.B.3.

IX. Liability for online Activities

The Digital Millennium Copyright Act of 1998 requires universities who wish to obtain the liability protection available under the law to adopt and implement a policy that provides for the termination of the computer privileges of users who are repeat infringers with respect to online copyright violations. In accord with the law, students who display a pattern of conduct in their use of the WSU computer network that creates legal liability for the university may have their computer privileges terminated. See *WSU Policies and Procedures Manual Section 19.12*. For faculty and other staff, including graduate students performing a research or teaching function, the standard that the University will be advised to use will be as follows:

- a. If the university receives formal notification of copyright infringement due to the actions of a WSU employee using the WSU network, the University will notify the employee the claimed infringement.
- b. It will be the burden of the employee to show that the alleged infringement is not a violation of the law.
- c. After two verified and actionable violations of the law, the computer privileges of the employee may be suspended or terminated by the appropriate academic or administrative authority.

Thus, in any case where doubt exists as to whether or not an online activity is copyright infringement, the Office of the General Counsel should be consulted. Special care must be taken to obtain copyright permission for any electronic reserve materials, as well as any course materials distributed by e-mail. The appropriate permission must be obtained prior to downloading and using syllabi from another institution.

^[1] Pursuant to changes made by the Copyright Term Extension Act of 1998 (Pub. L. No. 105-298) term of copyright is now life of the author plus 70 years, and for corporate, anonymous, or pseudonymous works, it is 95 years from the year of the first publication, or 120 years from the year of creation, whichever is first. Thus, older than a century is not an exact measure, but rather a rule of thumb. See Copyright Term and the Public Domain in the United States for a chart that may be used to determine when a work passes into the public domain at http://www.copyright.cornell.edu/public_domain/

Wichita State University Faculty Senate meeting Monday, November 23, 2009

MEMBERS PRESENT: Anderson, T. Bennett, Bolin, Brooks, Bryant, Carruthers, Celestin, Craft, Dale, Decker, DeSilva, Driessen, Hemans, Henry, Klunder, Kreinath, Lewis-Moss, Miller, Mosack, Myers, Pickard, Ross, D. Russell, L. Russell, Scherz, Skinner, Smith-Campbell, Soles, Spurgeon, Taher, Yildirim

MEMBERS ABSENT: Baker, Baldrige, J. Bennett, Horn, Hu, Moore-Jansen, Rillema, Rokosz, Yeager

MEMBERS EXCUSED: Hershfield, Monroe, Strattmann, Thompson

EX-OFFICIO MEMBERS: Provost Miller

Summary of Action:

I. Call of the Meeting to Order: President Soles called the meeting to order at 3:30 pm

II. Informal Statements and Proposals: none

III. Approval of the Minutes: Minutes of October 26, 2009, meeting accepted as presented.

IV. President's Report:

A. President Soles said the governor is supposed to release his new budget numbers this afternoon. If that information is released before the meeting today adjourns, Provost Miller will come by and tell us about it.

Last week the Kansas Board of Regents submitted a budget to the governor for FY2011. The proposal was for a flat budget. There is some confusion over which version of the budget, however, the July 1 budget or the July 2 budget.

B. The Planning & Budget Committee continues to meet. Almost all of the suggestions which have been submitted to date have been discussed.

C. The Faculty Senate Executive Committee and Provost Miller will be doing an in-depth review of General Education at WSU.

D. President Soles announced that the Holiday Gathering party will be Monday,

December 7, 3:30 - 5:00 in the lower level of Ablah Library

V. Committee Reports: none

VI. Old Business: none

VII. New Business:

A. WSU Copyright policy and Guidelines -- Lisa Jones, Assistant

General Counsel, discussed the proposed Copyright Policy and Proposed Copyright Guidelines. The proposed policy has been sent to President Beggs, but it has not yet been signed. No action by the Faculty Senate is required for this new policy.

Currently, the only policy relating to copyright in WSU Policies & Procedures is found in Section 15.04, which relates to copyright regulations for course packets. The intent of the proposed policy is to have something specific in WSU Policies & Procedures about copyright generally. This policy is fairly basic. The proposed guidelines are for guidance only; they will not be part of WSU Policies U Procedures.

Ms. Jones discussed some of the specific parts of the proposed policy. She noted that Section 3 states that if faculty and staff “willfully disregard” this Policy they may not be covered by the Kansas Tort Claims Act and would not be defended by the university.

There are several questions from the senators and a couple of points were noted that need further clarification or revision. First, Senator Soles pointed out that the reference to faculty and staff in the proposed policy may be unclear with respect to the application to graduate teaching assistants. Ms. Jones said that she believes GTAs fall under “staff” but agreed that may need clarification. Senator Spurgeon noted that the reference to the designation of “©” in the introductory section of the guidelines needs clarification, because the current wording implies that simply placing that symbol on something provides litigation rights, when in fact, it is the registration of a copyright which does that. Ms. Jones said that she understood this point and would look into that.

B. Budget Update -- Provost Gary L. Miller, made a brief report about the governor’s news conference and press release concerning the new budget numbers. There is a \$260 million deficit for FY2010 and by law the governor must close that gap. The current budget for FY2010 is \$6 million over the 2006 budget amount, which is the “maintenance of efforts” floor established by Congress in the Stimulus Bill. To reduce the gap, the governor recommended a number of things including a \$50 million transfer of funds from the highway funds; a \$5 million reduction for the Kansas Bioscience Authority; a \$36 million reduction in K-12 spending; a \$2 million reduction for universities in the regents’ system; taking unspent money from state agencies from previous years; adjustments in Medicare; and not funding K-12 increases from revised property taxes (though some of that will be offset by stimulus money). If the cut to the universities remains at that level it will be good news. However, Provost Miller said that we are not sure whether the taking of unspent money includes RU money, and if it does, that would create a problem for WSU.

VIII: As May Arise:

The meeting was adjourned at 4:30 pm

Respectfully submitted:

Larry Spurgeon, Acting Secretary