COPYRIGHT FREQUENTLY ASKED QUESTIONS

GENERAL QUESTIONS

Q: What is copyright?
A: Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- To display the copyright work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Q: Who can claim copyright?
A: Copyright protection subsists from the time the work is created in fixed form. The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright.

In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law defines a "work made for hire" as:

(1) a work prepared by an employee within the scope of his or her employment; or
(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire....

The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.

Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution.

Q: Do I have to give up copyright ownership of my work when it becomes published?
A: That is up to you. Most authors sign away their ownership when they accept the terms of publication from a publisher. However, very often you can negotiate with the publisher on this point. Be sure to read your contracts carefully and be sure any changes have been made in writing.
Q: What works are protected?
A: Copyright protects “original works of authorship” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories: literary works, musical works (including any accompanying words), dramatic works (including any accompanying music), pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings, architectural works.

Q: What is not protected by Copyright?
A: Several categories of material are generally not eligible for federal copyright protection. These include among others:

- Works that have not been fixed in a tangible form of expression, (for example, choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded)
- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents
- Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation, or illustration
- Works consisting entirely of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources)

Q: How can I secure a Copyright?
A: No publication or registration with the U.S. Copyright Office is required to secure copyright. However, there are certain advantages to registration. See the U.S. Copyright Offices site at www.loc.gov/copyright/reg.html for Copyright Registration Procedures.

Q: Do I have to use the copyright notice - © - on my work to make it official?
A: The use of copyright notice is no longer required under U.S. law, although it is often beneficial. Notice was required under the 1976 Copyright Act but this requirement was eliminated for works published on, or after March 1, 1989. Use of the notice may be important because it informs the public that the work is protected by copyright, identifies the copyright owner, and shows the year of first publication. Registered works may be eligible for statutory damages and attorney’s fees in successful litigation. The use of the copyright notice is the responsibility of the copyright owner and does not require advance permission from, or registration with, the U.S. Copyright Office.

Q: What should be contained with my copyright notice?
A: Three elements should appear:

- The symbol © (the letter C in a circle), or the work “Copyright,” or the abbreviation “Copr.”;
- The year of first publication of the work.
- The name of the copyright owner in the work, or an abbreviation by which the name can be recognized.

Example: © 2000 John Doe
Q: How long does copyright protection last?
A: The length of protection differs depending upon when the work was created:

Works Originally Created On or After January 1, 1978

   Works by an individual: life of author plus 70 years.
   Joint works: life of the last surviving author plus 70 years
   Anonymous works, pseudonymous works, works for make for hire, “corporate” authors: 95 years from first
   publication date or 120 years from creation, whichever is shorter.

Works Originally Created Before January 1, 1978, But Not Published or Registered by That Date

   Length of protection is the same as above except that no term of copyright shall expire before December 31,
   2002. If the work is published on or before December 31, 2002, the term will not expire before December 31,
   2047.

Works Originally Created and Published or Registered Before January 1, 1978

   Copyrights on these works were extended to 75 years from first date of copyright provided the copyright was
   renewed prior to the expiration of the initial term.

Q: May a copyright be renewed?

Q: Are works by the U.S. government in the public domain?
A: Works created by U.S. government officers or employees in the course of their employment
are in the public domain.

Q: Are works by state and local governments in the public domain?
A: No. States and local governments may claim copyright in their works.

Q: Many materials state “all rights reserved” and that any copying is an infringement. Is
this true?
A: No. Fair use standards apply and certain libraries may be exempt.

Q: Can unpublished works, like letters and diaries, be copied?
A: As of 1992, unpublished works can be copied as long as fair use is applicable.

Q: Can citations and abstracts be downloaded from Ovid, PubMed, etc. and used for other
sources such as departmental home pages, subject databases, etc.?
A: A citation is considered a fact, but an abstract is considered a personal work. To use an
abstract in any other work requires the permission of the copyright holder (usually the journal
publisher). You may, however, use citations. For complete information on this issue read the
Q: Why can’t I.L.L. get certain articles for me because of copyright?
A: The law strongly recommends I.L.L. departments to follow the “Rule of 5” guidelines. Each calendar year, an I.L.L. department is allowed to borrow only 5 articles from the most recent 5 years of one journal title. Once the limit is reached, articles can still be obtained from a copyright vendor for a fee (see next question).

Q: Why can’t the library make a copy of every article received through I.L.L. and scan it into some kind of database so that everyone can access these hard-to-find articles?
A: First, to archive materials not held by the library without permission and/or payment of royalties would be a violation of copyright as it would be considered “systematic copying”. Second, MCW Libraries I.L.L. orders about 15,000 articles per year and it would be too difficult and expensive for the library to maintain permission and royalty records for thousands of records year after year. There are large, for-profit entities that do exactly what the question asked. These document delivery vendors or copyright clearinghouses work with the publishers and can supply articles to a library or a direct user for a fee ($30 per article average).

Q: Can I.L.L. send me my material electronically?
A: The I.L.L. section of the law refers to copies. It does not qualify the type of copies. Therefore, electronic copies are probably permissible. However, electronic copies are copyright protected and all other restrictions and/or guidelines will apply. Many libraries are hesitant to fully do this yet as digital copyright laws evolve. Some publishers now impose “electronic restrictions” for I.L.L. -- so time will best tell.

Q: Why can’t I.L.L. take requests over the phone?
A: A Warning of Copyright display is required to be on every I.L.L. request form. It is there to continually educate I.L.L. users about copying restrictions. While technically it is possible to read this long, legal warning over the phone, it typically is not done. Any verbal warning would be hard to prove in a court of law. A paper or “electronic” signature from the requestor is most often required by libraries, but is not law.

Q: Can an I.L.L. item be placed on reserve?
A: Typically no. It is highly recommended by the American Libraries Association that any item placed on reserve should be from the library collection. Of course, there can be those rare exceptions. No returnable items (books, videos, slides, etc.) should ever be placed on reserve. Most items are on reserve for a full semester, while most I.L.L. material is usually on loan for only 4-6 weeks. There are standards and guidelines for resource sharing libraries and returning material back on time is one of them.

Q: Why can’t I.L.L. get a copy of an entire work for me if my library doesn’t own it?
A: It does not stand the test of “fair use” for two reasons. It is a whole work and whole works cannot be copied without permission from the copyright holder. Generally, a reasonable portion of a work may be copied. Many I.L.L. departments will obtain the table of contents for a patron who requests a whole work. That gives the customer a chance to get more specific and then submit a request for a reasonable portion of the work. Copying a whole work may also affect the potential market or value of the copyrighted work. A copy of a whole work may not be used to substitute as a replacement for purchasing the work.
Q: If a curriculum director mandates that certain duplicated materials be used for a course, would that be within the copying guidelines?
A: No! A “higher authority” cannot direct others to improperly reproduce or use a work or works. If that material is mandated, the “higher authority” would be expected to seek permission for copies that may be in violation of the law.

Q: Can material copied for my fall semester class be used for the spring semester course, too?
A: Yes, if you seek permission for that second semester. No, if you do not get permission! The guidelines basically give instructors one semester grace period. It is assumed that by the time the consecutive semester begins, there would have been ample time to receive permission from the copyright holder(s).

Q: If I’m doing research and stumble upon an article that would be great for next week’s class, can I make copies of it to use in class?
A: Yes, you can if it meets the 4 tests of classroom copying: brevity, spontaneity, cumulative effect and each copy includes a notice of copyright. Brevity is defined specifically by word and/or percentage of the work limitations (see glossary). Spontaneity refers to an instructor’s decision to use a work so far into the course that he or she could not get permission fast enough. Cumulative effect has three parts: 1.) that the copy made is for only one course in the school, 2.) no more than one article is from the same author or no more than 3 articles come from the same volume or collective work during the class term, and 3.) the article will not be used from term-to-term without permission. There should also be no charge beyond the cost of copying to the students. “Spontaneous” copying should be limited to more than nine instances during the class term.

Q: Can I put my own personal copies of a work or works on reserve in the library?
A: Yes! Presuming any copy or other work was lawfully obtained from a College source, the library will be able to place the work on reserve. However, any law and library policies still apply.

Q: Can I put multiple copies of a work on reserve?
A: Yes, provided the following factors are considered: 1.) the amount of material should be reasonable in relation to the amount of material assigned for one term of the course, 2.) the number of copies should be reasonable to the number of students enrolled in the course (for most libraries, a reasonable amount is no more than 5 copies), 3.) the material should contain a notice of copyright, 4.) it should not be detrimental to the market for the work (the library should have at least one copy of the work), and 5.) timeliness should be a factor in the need to make copies.

Q: If I cannot find a suitable textbook for my class, may I substitute a variety of works to cover the course?
A: It sounds like you may be creating an anthology. You can do this if you obtain permission to use the works. If you don’t, look out! There are legal cases involving such anthologies—the most famous being Basic Books, Inc. vs. Kinkos. Nine publishers sued New York University, several of its faculty and Kinkos for photocopying and selling anthologies of copyrighted course material. Even though it was for educational purposes, permission was not obtained. The court ruled against Kinkos and NYU because the “amount and substantiality” of the copying had a negative impact on the market for the works.
Q: May I digitize a slide collection and put it up on a web page?
A: Yes, provided you obtain permission from the copyright holder.

Q: May I digitize print reserve items to increase accessibility for users?
A: The jury is still out on this one. To date, no cases have appeared on this issue. However, many libraries are taking a conservative approach and require that permission be granted from the copyright holder to digitize items. This is an area that still needs further clarification. Please see MCW Libraries’ Electronic Reserve for In-Classroom Courses Policy.

Q: May I make a backup (archival) copy of a software program in case damage occurs to the original?
A: Yes, if you are legal owner of the software this is permitted.

Q: I'm a teacher. Can I make 5 copies of a copyrighted computer program to distribute to my students?
A: No, this is strictly forbidden.

Q: I have 1 copy of a software program. Can I install the program on several computers?
A: Doing so would most likely violate the program’s license agreement. Read all fine print on license agreements very carefully. Also, many license agreements prohibit the installation of software onto a network if a network version of the software was not purchased.