



TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EL PASO

Operating Policy and Procedure

HSCEP OP: 57.02, Guidelines for the Educational Use of Copyrighted Works

PURPOSE: The purpose of this Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) Operating Policy and Procedure (HSCEP OP) is to ensure understanding and a standardized approach regarding the handling of materials controlled by a copyright.

REVIEW: This HSCEP OP will be reviewed by May 1 of every even-numbered year (ENY) by the Director of Libraries and an Ad Hoc committee or designees, with recommendations for revision submitted to the Vice President for Academic Affairs or designee by June 1.

POLICY:

It is the policy of the Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) to adhere to the requirements of the United States Copyright Law of 1976, as amended, (Title 17, United States Code, hereinafter, the "Copyright Act"), including those requirements for journals, books, audio recordings, audiovisuals, pictures, and software. This policy/procedure applies only to copyrighted materials. Materials not protected by copyright or otherwise in the public domain may therefore be copied without restriction. Works authored by the United States Government or by some states are not protected by copyright. Works published prior to March 1, 1989 customarily require a copyright notice, and are therefore presumed to be copyright protected. Works published after March 1, 1989 do not require a copyright notice, and should therefore be presumed to be under copyright protection. States and their instrumentalities are liable for violations of the Copyright Act, and all remedies for copyright infringement apply to states, as well as to private individuals (PL 101-553). TTUHSC El Paso faculty, staff, and students are reminded that the institution does not condone copyright infringement, and that individuals who violate copyright are not protected by the institution. Files belonging to the institution or any individual and containing copyrighted material or records of such copying may be subject to subpoena.

It is also the policy of TTUHSC El Paso to invoke the doctrine of "Fair Use" as defined by Section 107 of the Copyright Act in order to enable legal copying of copyrighted materials by faculty, staff, and students, without seeking the permission of a copyright holder, and without the payment of royalty fees to a copyright holder. "Fair Use" for educational purposes may not be automatically invoked simply on the basis of copying copyrighted material for educational purposes, or on the basis of such copying being made by a non-profit organization. Each claim of "Fair Use" must instead be weighed against four criteria:

1. The purpose and character of the use;
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.

Each of these four criteria must be addressed in any invocation of "Fair Use" for the copying of a copyrighted work, regardless of the format of that work (book, journal, audiovisual, audio recording, pictures, or software).

PROCEDURAL GUIDELINES:

The following procedural guidelines have been adopted by TTUHSC El Paso to provide faculty, staff, and students with a greater certainty of procedure, to reduce risks of infringement, as well as to assure maximum flexibility within the framework of lawful compliance. In as much as copyright infringement is a criminal act which may result in grave consequences in terms of liability to the institution and to the individual, it

is appropriate that the institution establish and promulgate the following guidelines so as to provide the individual with a set of “rules” which reflect both the law as set forth in the U.S. Code and case law as it seeks to interpret that law.

Since copying of copyrighted materials may take different forms, depending upon the purpose for such copying, these guidelines are set forth according to the following classification:

1. Teacher and classroom copying;
2. Music and audiovisual copying;
3. Individual (and student) copying;
4. Copy Center and Departmental copying;
5. Library copying;
6. Copying for broadcast; and,
7. Computer-related copying.

All faculty, staff, and students of TTUHSC El Paso are required to adhere to the following guidelines.

1. **Teacher and Classroom Copying of Printed Material.**

- a. **Single Copying.** A single copy may be made by a teacher or staff member (or for a teacher or staff member at his/her individual request) of any of the following:

- (1) A chapter from a book;
- (2) An article from a periodical, or newspaper;
- (3) A short story, short essay or short poem, whether or not from a collective work,
or
- (4) A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

Given the heavy dependence upon the periodical or journal literature in higher education, teachers and staff members are warned that systematic copying of single articles, so as to have the cumulative effect of copying an entire journal issue or volume without permission from the copyright holder or without payment of royalty fees, is a violation of the Copyright Act, and thus constitutes a criminal act.

- b. **Multiple Copying for Classroom Use.** Multiple copies (no more than one copy per student in a course) may be made by or for a teacher giving the course for classroom use or discussion provided that:

- (1) The copying meets the tests for brevity and spontaneity as provided in the examples below;
- (2) Meets the cumulative effect test as defined below; and
- (3) Each copy includes a notice of copyright.

Any copying of copyrighted material which exceeds the limits described herein above must be done with the written permission of the copyright holder, or must be done with the payment of royalties to either the copyright holder or his/her/its royalty collection agent.

(a) **Brevity (Examples).**

- (i) **Poetry:** A complete poem if less than 250 words and if printed on not more than two pages, or if from a longer poem, an excerpt of not more than 250 words.
- (ii) **Prose:** Either a complete article, story, or essay of less than

2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.

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

- (ii) **Illustration:** One chart, graph, diagram, drawing, cartoon, or picture per book or periodical issue.
- (iv) **Special Works:** Certain works in poetry, prose or in “poetic prose” which often combine language and illustration fall short of 2,500 words in their entirety. Such special works may not be copied in their entirety, but an excerpt comprising not more than two pages and containing not more than 10 percent of the words found in the text may be copied.

(b) **Spontaneity (Examples).**

- (i) The copying is of an immediate need as a result of the inspiration of the individual teacher; and,
- (ii) 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 to copy from a copyright holder.

(c) **Cumulative Effect (Examples).**

- (i) The copying is for only one course in the school in which the copies are made;
- (ii) 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 semester; and,
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class semester.

The limitations in (c)(i) and (ii) immediately above, shall not apply to current news periodicals, newspapers, and current news sections of other periodicals.

(d) **Prohibitions as to Brevity and Spontaneity (Examples).** The following practices are prohibited:

- (i) Copying used to create or to replace or substitute for anthologies, compilations, or collective works. A prohibited replacement or substitution occurs regardless of whether copies of various works or excerpts there from are accumulated or are reproduced and used separately.
- (ii) 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, answer sheets, and like consumable material.

(iii) Copying:

- To substitute for the purchase of books, publisher's reprints, or periodicals;
- That is directed by higher authority (e.g., a teacher directing his/her students to copy an article); or,
- Which is repeated with respect to the same item by the same teacher from semester to semester.

(iv) Copying wherein costs and charges for copying are made to the student beyond the actual cost of the photocopying.

(e) In any face-to-face class session which utilizes copyrighted material, it is the responsibility of the teacher/instructor to assure that such utilization is lawful.

2. **Music and Audiovisual Use in the Face-to-Face Classroom.**

- a. If copyrighted music or audiovisuals are used in a face-to-face conventional class, some utilizations may be made under fair use. No more than ten percent (10%) of a copyrighted work of music may be used, but not repeated for the course in the next semester, unless permissions have been obtained from the copyright holder. Under provisions of Section 110 of the Copyright Act, a lawfully obtained copyrighted film or videocassette, not labeled "Home Use Only", may be aired in a face-to-face class, provided that such airing is within the scope of the educational intent of the course. No copy of such a film or videocassette may be made without first securing the permission of the copyright holder.
- b. In any face-to-face class session which utilizes copyrighted material, it is the responsibility of the teacher/instructor to assure that such utilization is lawful.

3. **Individual (and Student) Copying of Printed Material.** While individuals engaged in the copying of copyrighted materials are subject to the same freedoms, restrictions, and prohibitions outlined above in Section 1, TTUHSC El Paso has no mechanisms by which to monitor such copying. For this reason, TTUHSC El Paso photocopy machines and printers (including self-service machines) have posted warnings which serve to remind those persons that the copying of copyrighted materials is subject to the Copyright Act. In short, the individual is responsible for compliance with the Copyright Act in his/her copying of copyrighted material. The individual may not be directed by higher authority to make copies of copyrighted material when such copying is not in compliance with the Copyright Act.

4. **Copy Center and Departmental Copying of Printed Material.** The TTUHSC El Paso Copy Center, departments, and schools may legally provide teachers and staff with single or multiple copies of copyrighted materials that meet the guidelines outlined in Section 1, above. The Copy Center or person within a department or school charged with making the copies may not be directed by a higher authority to make copies, which are not in compliance with the Copyright Act. The Copy Center, department, or school, as applicable, reserves the right to refuse to make copies of materials when such copying, in its judgement, is not in compliance with the Copyright Act. To assure that responsibility for lawful copying rests with the requestor, a release form signed by the requestor must accompany each request for copying to be performed. This release form shall state that the copying requested in the order is in compliance with the Copyright Act. TTUHSC El Paso personnel are also advised that they as individuals are similarly responsible for compliance with the Copyright Act when they make use of off-campus copy vendors.

5. **Library Copying of Printed Material.**

- a. **Internal Library Copying.** The TTUHSC El Paso Libraries may legally provide teachers, staff, students, or the general public with single copies of copyrighted materials that meet the guidelines outlined in Section 1, above. Each copy thus made will bear the following notice:

“This material may be protected by copyright law (Title 17, U.S. Code)”

The TTUHSC El Paso Libraries will not make multiple copies under any circumstances. The libraries may make one copy of a copyrighted journal article for placement on reserve for class use upon receipt of a written request of the course teacher. Each copy thus made will bear the following notice:

“This material may be protected by copyright law (Title 17, U.S. Code)”

The TTUHSC El Paso Libraries will not make multiple copies of articles for placement on reserve. The libraries reserve the right to refuse to make copies of copyrighted materials which are not in compliance with the Copyright Act. The libraries may not be forced by higher authority to make copies which are not in compliance with the Copyright Act.

- b. **Interlibrary Loan.** Libraries may also be liable under the law for acquisition of copyrighted materials obtained via interlibrary loan from other libraries. The interlibrary loan convention permits the securing of, for example, photocopied journal articles from other libraries. This convention, set forth by the Commission on New Technological Uses of Copyrighted Works (CONTU), permits the annual fair use requesting of a maximum of five journal articles per journal title for the then-current five-year period. For example, five single copies of a total of five articles appearing within the years 1996 back to 1991 in a single journal title (e.g., JAMA) may be legally secured by one library from another library without payment of royalties. Any additional requests from such a journal title within that time frame require permission from or payment to the copyright holder or his/ her/its royalties collection agent. Requests over the permitted limits described above for a single journal title shall signal a review of that title for acquisition to the journal holdings of the TTUHSC El Paso Libraries. Paper records and computerized records of interlibrary loan requests shall be retained by the TTUHSC El Paso Libraries for a period of five years, after which time they will be destroyed.

6. **Copying for Broadcast.** Copying of copyrighted materials for broadcast purposes, including broadcasts utilizing copyrighted printed works, video, music or other audio recordings, whether for “live” video broadcasts, or pre-recorded video programs, presents a special set of problems with regard to copyright compliance. Within this discussion of copying, the TTUHSC El Paso environment has three specific areas of broadcast activity, which must be considered: closed circuit interactive distance learning classes; closed circuit medical consultations and peer conferences; and educational offerings or conferences, which are broadcast to the external environment by satellite, Internet, or other broadcast means. In the case of closed circuit broadcasts, it is assumed that such broadcasts are not-for-profit, and are aired from a specific classroom, or conference room, or consultation room to a specific classroom, or conference room, or consultation room at a specific site TTUHSC El Paso or to a specific classroom or conference room or consultation room at another non-TTUHSC El Paso site). If programs containing copyrighted materials are aired for commercial gain by TTUHSC El Paso, fair use may not be invoked, and permissions from all copyright holders must be obtained. Again, the guidelines supplied below refer to only those airings which incorporate copyrighted material.

- a. **Closed Circuit Live Interactive Distance Learning Classes.**

- (1) Display or copying of copyrighted materials for closed circuit live interactive distance learning classes shall closely follow fair use guidelines for print

materials as described in 1.a. and 1.b. above. Each class thus presented shall begin with a text screen that states:

“This class session may contain copyrighted material legally available to this class session as set forth in Title 17 of the United States Code.”

Copies of such a broadcast may not be made by the host or by the receiving site, unless permissions to do so have been granted by the copyright holder.

- (2) A teacher having used a specific copyrighted item under terms of fair use in a closed circuit live interactive distance learning class session may not use that item in a following class session, nor from semester to semester, unless specific permissions to do so have been granted by the copyright holder.

- (3) As is the case with face-to-face conventional classroom use of copyrighted material, students at both the host classroom and the receiving classroom in a closed circuit interactive distance learning class may be provided with copies of printed or graphic (but not music nor audiovisual) copyrighted material (one copy per student). Each copy provided must bear the following copyright statement:

“This material may be protected by copyright law (Title 17, U.S. Code).”

- (4) If copyrighted music or audiovisuals are used in a closed circuit interactive distance learning class, some utilizations may be made under fair use. No more than ten percent (10%) of a copyrighted work of music may be used, but may not be repeated for the course in the next semester, unless permissions have been obtained from the copyright holder. Under provisions of Section 110 of the Copyright Act, a lawfully obtained copyrighted film or videocassette, not labeled “Home Use Only”, may be aired to a closed circuit interactive distance learning class, provided that such airing is within the scope of the educational intent of the course. No copy of a closed circuit live interactive distance learning class containing such a film or videocassette may be made without first securing the permission of the copyright holder.

- (5) In any closed circuit live interactive distance learning class session which utilizes copyrighted material, it is the responsibility of the teacher/instructor to assure that such utilization is lawful.

- b. **Closed Circuit Live Medical Consultations and Peer Conferences.** The utilization of copyrighted material in conjunction with the broadcast of live medical consultations or peer conferences is subject to the same provisions that govern closed circuit distance learning class situations, as described in 6.a. above.

- (1) Closed circuit live peer conferences or medical consultations may make use of print or graphic (but not music nor audiovisual) copies (one copy per conference attendee) of copyrighted material. Each copy provided must bear the following copyright statement:

“This material may be protected by copyright law (Title 17, U.S. Code).”

- (2) Assurance of copyright compliance is the responsibility of the moderator of such closed circuit live consultations or conferences.
- (3) If copies are to be made of such live consultations and peer conferences which include copyrighted material, permissions must be obtained from the copyright holder(s).

c. **Broadcasts to the External Environment.** Broadcasts to the external environment (non-TTUHSC El Paso or non-TTUHSC El Paso related) which make use of satellite, Internet, or other broadcasting technology may fall into two general categories: not-for-profit educational, and for-profit commercial (which might be educational).

(1) In the case of all external environment **for-profit live or for-profit pre-recorded broadcasts**, regardless of educational intent, all uses of copyrighted material must be accompanied by permissions from the copyright holder or his/her/its royalty and permissions agent. Additionally, if copies are to be made of such broadcasts, permissions to copy must be obtained. Non-authorized copying of such broadcasts is illegal.

(2) In the case of external environment **not-for-profit educational live broadcasts** which make use of copyrighted material, the same rights and prohibitions as outlined in 6.a. and 6.b. above may apply. If subscription and/or licensing fees are assessed to the recipient of such broadcasts, the broadcasts are for-profit, and thus subject to permissions and the payment of royalties. In any event, copies may not be made of such broadcasts without the permission of the copyright holder or his/her/its royalty and permissions agent.

(3) In the case of all external environment **pre-recorded broadcasts**, permissions must be obtained for all copyrighted material. Pre-recording for broadcast precludes the argument of spontaneity, even though such a pre-recorded broadcast may be not-for-profit. The end or trailer of such a pre-recorded broadcast must include a list of all copyrighted material and the statement of permissions for that material. Additionally, copies may not be made of such broadcasts without the permission of the copyright holder or his/her/its royalty and permissions agent.

7. **Computer-Related Copying.** Computer-related copying may take many forms: copying of software; printing of items from computerized files; and downloading of computerized files, or copying items from computerized files to a hard disk or to an electronic storage space. Many items within computerized files are copyrighted, or are subject to licensed control. Users of computers must exercise care in the use of such materials. The following guidelines relate only to the copying of copyrighted or licensed materials.

a. **Copying of Software.** Software operating systems and application programs should be considered copyrighted material, unless they are termed as “free-ware” or public domain by their producers and manufacturers. In most cases, a software program carries a license to which the purchaser agrees upon purchase or at the time of the software’s installation. It is customary for software producers to permit the creation of one archival or “back-up” copy for each installation permitted by the license. A license may be for one installation or for multiple installations of a specific software program. Copies of licenses for software programs which are purchased by TTUHSC El Paso departments or individuals shall be kept on file within the department or by the individual so long as the software is in use. Certain basic utility and application programs are made available to TTUHSC El Paso individuals and departments as “site license” programs. Such site licensed programs will generally have only one license for the campus or for the institution as a whole. Licenses for such programs are kept on file centrally within the campus or institution.

(1) Copying, adapting, and electronic transmission of computer software is strictly forbidden by TTUHSC El Paso personnel, except:

(a) In strict compliance with Public Law 96-517, Section 10(b), which, in amending Section 117 of Title 17 (U.S. Code) to allow for the making of

computer software back-up copies, states (in part) "...it is not an infringement for the owner (purchaser) of a copy of a computer program to make or authorize the making of another copy or adaptation of a computer program provided:

- (i) "That such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
 - (ii) "That such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."
- (b) Where appropriate written consent from the copyright holder is obtained.
 - (c) Where the software is in the public domain or is "free-ware" and that can be verified.
- (2) Illegal copies of software may not be used on TTUHSC El Paso computers.
 - (3) Software may not be mounted so as to permit multiple use or multiple site use unless such permissions are granted by the software license itself, or granted by the copyright holder or his/her/its royalty or permissions agent.

b. Copying of Computerized Files and Their Contents.

- (1) Copies (to paper or to an electronic storage device) may be legally made of computerized files and their contents, provided that the program license does not forbid such copying. Generally, a computerized file will usually carry an on-screen warning if copying is not permitted.
- (2) Care must be exercised in the copying of material found on the Internet. Some websites may contain copyrighted materials, but may neglect to inform visitors to their websites contain copyright-protected material. It is the position of TTUHSC El Paso that the presence of such copyrighted material is the responsibility of the owner of the web site or home page, and liabilities for copyright non-compliance must devolve to that owner. TTUHSC El Paso home pages and web sites may not include copyrighted material unless permissions have been granted by the copyright holder or his/her/its royalty and permissions agent.
- (3) Legally obtained copies of copyrighted materials may be legally scanned by use of tele facsimile equipment, or by use of scanners attached to computers for purposes of transmission. Materials thus copied must bear the following statement: "This material may be protected by copyright law (Title 17, U.S. Code)."

Such materials may not be scanned for storage in a digital format, unless permission to do so has been granted by the copyright holder. If such permission has been granted, the scanned and stored material must bear the following statement: "This material may be protected by copyright law (Title 17, U.S. Code)."

- (4) TTUHSC El Paso personnel may not incorporate copyrighted material into locally-created databases, digital archives, or video files which are mounted on TTUHSC El Paso machines or on machines which are housed on TTUHSC El Paso property, unless specific written authorization and permission has been granted to do so by the copyright holder or his/her/its royalty and permissions agent. Any copyrighted material that has been thus permitted will be identified as such as a screen within

the body of the program or as a footnote where such display of copyrighted material occurs.

8. **Legal Opinion Regarding Copyright.** Before any TTUHSC El Paso personnel take action or cause action to be taken that could possibly infringe any “exclusive rights in copyrighted works” (Section 106, U.S. Code) that have not been exempted or otherwise removed from the scope of Section 106 by specific provisions of Sections 108-118 or is not clearly “fair use” (Section 107) under the guidance of the procedural guidelines delineated in this HSCEP OP, the matter will be submitted in writing to the TTUHSC El Paso General Counsel for a legal opinion. Submissions in writing must include:
 - a. The work (original, reasonable facsimile, or reproduction) which could possibly be infringed.
 - b. A description of the use/action contemplated or anticipated that could possibly cause the infringement.
 - c. An explanation as to why the use/action is necessary, and how it is of benefit to TTUHSC El Paso.
 - d. All related pertinent materials, including timelines and deadlines, especially those that would have a bearing on the amount of time available for developing the legal opinion.

9. **Seeking Permissions.** Permissions for copyrighted materials may be obtained through a variety of mechanisms. For most of the periodical and journal literature, permissions information is available at the Copyright Clearance Center, Inc. (CCC), 222 Rosewood Drive, Danvers, MA 01923/ Telephone 508-750-8400/Fax 508-750-4744. Many book publication permissions may be obtained at CCC as well. Music permissions information may generally be obtained from ASCAP, One Lincoln Plaza, New York, NY 10023/Telephone 212-621-6000, or BMI, 320 W.57th Street, New York, NY 10019/Telephone 212-586-2000. Information on intellectual property and related matters may be obtained from the International Confederation of Societies of Authors and Composers (CISAC) home page <http://www.cisac.org/>. Many book and software permissions may be obtained by writing directly to the author. Publishers of book materials frequently provide addresses for their book authors. A sample permissions letter is provided in Attachment A.