3.14 Copyright Policy

These guidelines apply to use of copyrighted material at Mercer University and are based on the Copyright Act of 1976. This act provides federal copyright protection to original works of authorship that are fixed in any tangible form by or under the authority of the author, 17 U.S.C. section 102(a).

The categories of works with copyright protection that are within the scope of this document are, in the broadest sense of each term, as follows: literary works, pictorial and graphic works, compilations, collective and derivative works, 17 U.S.C. sections 102-103. Guidelines for use of audiovisuals and computer software are included in Appendix A.

A. Each library will provide users with as much assistance as possible in evaluating the copyright status of a work. The University’s General Counsel should be consulted for advice in determining the applicability of the following general rules to particular works in uncertain cases.

1. Duration of Copyright

1.1 For works created in 1978 or later, copyright protection begins at the moment of creation and lasts for the life of the author plus 50 years. For works for hire (i.e. music, plays), the copyright lasts for 75 years from the first publication or 100 years from creation. Terms of copyright vary for anonymous works and for works of joint authorship. 17 U.S.C. section 302(a-c).

1.2 For works created and federally copyrighted before 1978, copyright protection is for an initial term of 28 years from the year copyright was secured. Copyright can be renewed for an additional 47 years if renewal is obtained during the last year of the initial term. 17 U.S.C. section 304(a).

1.3 For works created before 1978 but not federally copyrighted by this date, copyright protection extends for the life of the author plus 50 years. However, no such copyrights will expire prior to the end of 2002 and, if the work is published by that time, copyright will extend through 2027. 17 U.S.C. sections 302-303.

2. What Can Be Copied Under Fair Use

The law requires that some copying be done only with permission from the copyright holder. Other copying may fall under the doctrine of fair use in which some copying is not an infringement of the copyright. The doctrine of fair use is incorporated into the copyright statute. Section 107 lists a number of preferred fair uses such as for purposes of “criticism, comment, news reporting, teaching, scholarship, or research.”

2.1 Four Criteria for Fair Use

The doctrine of fair use considers all of the following criteria:

a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit education purposes;
b. the nature of the copyrighted work;
c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
d. the effect of the use upon the potential market for or value of the copyrighted work.

Examples of Fair Use:

Single copies of the following types of material for educational purposes generally are considered to be a fair use of the material:

a. A chapter from a book;
b. An article from a periodical or newspaper;
c. A short story, short essay, or short poem, whether or not from a collective work; and
d. A chart, diagram, graph, drawing, cartoon, or picture from a book, periodical or
newspaper.

Copies of more substantial portions of works and/or multiple copies may constitute fair use when
they are for education purposes. See subsequent sections of this policy for additional guidelines
that relate to the type of copying requested.

3. Copies Requiring Permission From The Copyright Owner
When research or instructional needs require copying beyond the limits of fair use, permission to
copy must be obtained from the copyright owner and/or payment of royalties may be necessary.

3.1 It is the responsibility of the requestor to obtain permission for such copying and to attest on
the appropriate form that permission has been granted.

3.2 The appropriate library will provide as much assistance as possible in identifying the
copyright owner when permission is required.

4. Exemptions
Certain publications may be exempt from copyright restrictions as, for example, publishers who
participate in reciprocal agreements with other members of the academic community, journals
published by certain associations, and articles reporting research supported by Public Health
Service (PHS) grants.

II. Library Photocopying Services
Library photocopying services include both unsupervised photocopy services and supervised services.

1. Unsupervised Photocopy Service
In unsupervised photocopy service, the library provides self-service machines on its premises but
does not exercise control over the materials photocopied. The library staff is only responsible for
maintaining the equipment and collecting fees for the number of pages copied. Section 108(f)
protects the library and its employees from liability for copyright infringement that results from the
unsupervised use of reproducing equipment located in the library, if the equipment displays
prominently the following warning, as prescribed by the Register of Copyrights, 17 U.S.C. section
108(f)(1):

   NOTICE
   THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, U.S. CODE) GOVERNS THE MAKING OF
   PHOTOCOPIES OF COPYRIGHTED MATERIALS. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY
   INFRINGEMENT.

2. Supervised Photocopy Service
In supervised photocopy service, employees of some libraries produce photocopies of their library’s
materials on the library’s equipment at the request of individual library users. This includes the making
of photocopies for the private use of individuals in the library and for filling interlibrary loan requests.
Sections 107 and 108 of the Copyright Act of 1976 are especially pertinent to copying that may be
requested by library users. It is not an infringement of copyright for the library, or any of its employees
acting within the scope of their employment, to reproduce no more than one copy of a work, or to
distribute such copy under the conditions described in II.2.1.

The University’s General Counsel should be consulted for assistance in determining the applicability
of this policy in any uncertain cases.

2.1 Criteria for Fair Use Library Photocopy Services
The library staff, where this service is provided, may make a single photocopy of library materials in response to requests from library users if the following conditions are met:

2.1.1 The Fair Use Criteria outlined in I.2.1 of the INTRODUCTION to this document are followed:

2.1.2 The collections of the library are:

   a. Open to the public
   b. Available not only to researchers affiliated with the library or with the institution of which it is a part, but also to other persons doing research in a specialized field.

2.1.3 The library displays prominently, at the place where orders are accepted, the following warning of copyright in accordance with requirement prescribed by the Register of Copyrights, 17 U.S.C. Section 108(d)(2):

   NOTICE

   THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, U.S. 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 THE 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 COPYING ORDER IF, IN ITS JUDGEMENT, FULFILLMENT OF THE ORDER WOULD INVOLVE VIOLATION OF COPYRIGHT LAW.

2.1.4 Library users complete and sign a photocopy request form for each photocopy requested;

2.1.5 The WARNING CONCERNING COPYRIGHT RESTRICTIONS appears on the photocopy request form as follows:

   a. The notice must be printed within a box located prominently either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form.
   b. The notice must be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the type be smaller than eight points.
   c. The notice must be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

2.1.6 The reproduction of the work includes a notice of copyright:

   NOTICE

   THIS MATERIAL MAY BE PROTECTED BY COPYRIGHT LAW (TITLE 17, U.S. CODE).

2.1.7 More than one article or other contribution to a copyrighted collection or periodical issue is copied for a user.

2.1.8 The reproduction becomes the property of the user (108(d)(1)).

2.1.9 The library has had no indication that the copy would be used for any purpose other than private study, scholarship, or research.

2.1.10 The reproduction is made without any purpose of direct or indirect commercial advantage.
2.2 Guidelines for Copies Requiring Permission from the Copyright Owner

2.2.1 The following are examples of instances in which permission from the copyright owner and/or payment of royalties would generally be required:

a. The classroom use of photocopied materials in multiple courses or successive years;
b. The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks;
c. The creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be used together as the basic text for a course;
d. The reproduction of several articles from a recent issue of a journal;
e. The duplication of a substantial portion of a copyrighted work that is available for purchase at a reasonable price.

2.3 Supervised Photocopy Service Record Keeping

Libraries may compile data on the uses made of their photocopy services.

2.4 Alternatives to requesting photocopies

Options which can be considered in lieu of using standard interlibrary loan procedures:

a. Requesting a reprint from the author;
b. Buying an issue of the journal containing the article or articles;
c. Purchasing the needed copy from a licensed document delivery service.

III. Reproduction for Library Reserve

Reserve collections are not governed directly by the copying protections of section 108. Also publishers’ guidelines do not provide any assistance for library reserve because these guidelines anticipate a classroom teaching setting.

1. What Can Be Placed on Reserve Under Fair Use

Reproduction of a copyrighted work for teaching, including multiple copies for classroom use, may not be an infringement of the copyright law. When accepting materials for inclusion in the reserve collection, the copied material to be included:

1.1 Must be accompanied by a release form signed by the instructor. (Sample in Appendix B).

1.2 Must meet the four criteria for fair use as outlined above in the INTRODUCTION I.2.1.

1.3 Must be returned at the end of the term to the instructor.

2. Four Guidelines for Photocopies Placed on Reserve

Faculty at Mercer University who supply the photocopies to be placed on reserve should comply with the following guidelines:

2.1 The choice of material must be selective and sparing. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter and level. Reserve materials must meet the following criteria:

Brevity: Examples are a complete article, story, or essay which is a reasonable portion in relation to the total amount of material assigned.
Spontaneity: The decision to use the copyrighted work must be so close to the time needed that it would be unreasonable to expect a timely reply to a request for permission to copy from the work.

Cumulative Effect: The material copied must be for only one course or phase in the school; and there must be no more than nine instances of multiple copying for one course during one class term.

2.2 The number of copies should be reasonable in light of the number of students enrolled and the difficulty and timing of the assignments. A general guideline is one copy for each 10-15 students.

2.3 Additional copies of a copyrighted work may be placed on reserve if there has been insufficient time since the date of publication to obtain permission.

2.4 An entire copyrighted work may be reproduced only if the library has first determined that an unused edition cannot be obtained at a fair price. [17 U.S.C. section 108(c)]

3. Reserve Collection Copies Requiring Permission from the Copyright Owner
When instructional needs require copying beyond the limits of fair use, permission to copy must be obtained from the copyright owner and/or payment of royalties may be necessary. (See Appendix C - Obtaining Permission by Letter Request)

Examples of instances in which permission from the copyright owner and/or payment of royalties would generally be required to include:

a. The reserve use of photocopied materials in multiple courses or successive years;
b. The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks;
c. The creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be used together as the basic text for a course;
d. The reproduction of several articles from a recent issue of a journal;
e. The duplication of a substantial portion of a copyrighted work that is available for purchase at a reasonable price.

4. Alternatives to Copying for Reserve Collection
In lieu of seeking permission from the copyright owner, the following options can be considered:

a. Requesting reprints from authors;
b. Buying extra issues of the journals containing the articles;
c. Purchasing the needed copies from a licensed document delivery service.

IV. Interlibrary Loan Photocopying
The sections of the copyright law especially pertinent to reproductions that may be requested or supplied through interlibrary arrangements are sections 107 and 108.

The library may obtain photocopies from other libraries for Mercer library users and may supply copies to other libraries if the following conditions are met:

1. Guidelines for Libraries Requesting Interlibrary Loans for Copies Not Requiring Permission from the Copyright Owner
   1.1 The library must have a request form completed and signed by the requestor for each photocopy to be requested from another library.
1.2 The WARNING CONCERNING COPYRIGHT RESTRICTIONS must appear on the Interlibrary Loan request form as follows:

a. The notice must be printed within a box located prominently either on the front side of the form or immediately adjacent to the space called for the name or signature of the person using the form.
b. The notice must be printed in type size no smaller than that used predominantly throughout the form and in no case shall the type be smaller than eight points.
c. The notice must be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

1.3 Each library’s interlibrary loan department must indicate copyright compliance on requests for photocopies in accordance with the following guidelines established by the American Library Association:

To assure the supplying library that the request does conform with the copyright law, the requesting library should indicate either CCG (conforms to the copyright guidelines) or CCL (conforms to copyright law). Unless this representation of compliance is included, the supplying library may refuse to fill the request.

a. CCG - Conforms to Copyright Guidelines

The CCG code indicates that the request is in conformity with the National Commission on New Technological Uses of Copyrighted Works (CONTU guidelines). CCG applies only to materials described in Section 108(d) of the law, i.e., an article or other contribution to a copyrighted collection or periodical issue or a small part of any other copyrighted work. It should be used:

1. When the requesting library has observed the quantitative restrictions set forth in the CONTU guidelines 1A and 1B which are as follows:

   a. The library may not engage in borrowing of materials in such aggregate quantities in order to substitute for a subscription or purchase of the work.
   b. The library may not request more than five copies of an article or articles published in a periodical within five years prior to the date of the request.
   c. For copyrighted works other than journals, the library may request no more than five portions of any given work, including a collective work, during the entire period such a material is protected by copyright.

2. When the requesting library owns the materials, has ordered it, or, (for a periodical), has placed a subscription and the copy would have been justified by the other provisions of Section 108 if the requesting library's copy were available.

3. When the article or publication requested does not fall under standard copyright guidelines.

   Example:
   Some scholarly and association journals permit copying for scholarly purposes without regard to copyright ownership.
b. CCL - Conforms to Copyright Law

The CCL code is used whenever a copy is sanctioned under parts of the law other than Section 108(d) as qualified by 108(g)(2) and the CONTU Guidelines. CCL should be used:

1. When the material is in the public domain. Publications within the public domain are also beyond the purview of the guidelines.

2. When the requesting library believes that the reproduction and distribution of the copy is a fair use (see Section 107 and the Guidelines which interpret it).

3. According to current U.S. Public Health Service (PHS) policy, “communications in primary scientific journals publishing initial reports of original research supported in whole or in part by PHS may be copyrighted by the journal with the understanding that individuals are authorized to make, or have made by any means available to them, without regard to the copyright of the journal, and without royalty, a single copy of any such article for their own use”.

4. When the requested copy becomes the property of the user and the request is for an entire work or a substantial part of a work, where the requesting library has determined that a copy cannot be obtained at a fair price (see Section 108(e)).

5. When the requested copy becomes the property of the user and the requested photocopy is of the kind of material described in Section 108(d) but published earlier than five years prior to the date of the request and therefore not covered by the CONTU Guidelines.

6. When the requested copy becomes part of the collection of the requesting library and the requesting library has determined, after reasonable investigation, that an unused replacement is unavailable at a fair price, and if the request is for a facsimile copy of: 1) an unpublished work requested solely for research or 2) a published work requested solely for replacement of a damaged, deteriorating, lost or stolen copy of a work (see Section 108(b) and (c)).

1.4 Under the following circumstances, the copyright law allows a library to make or request a copy of an entire copyrighted work:

a. The library must first determine that an unused copy cannot be obtained at a fair price from the usual trade sources, the publisher, copyright owner or authorized reproducing service, [17 U.S.C. Section 108(c)].

b. A copy for the library’s collection must be made or requested for purpose of replacing a damaged, deteriorating, lost, or stolen copy [17 U.S.C. Section 108(c)].

2. Guidelines for Libraries Requesting Interlibrary Loans for Copies Requiring Permission from the Copyright Owner

When research needs require copying beyond the limits of fair use, permission to copy must be obtained from the copyright owner and or payment of royalties may be necessary.

Examples of copies requiring permission are:

a. The reproduction of several articles from a recent issue of a journal;

b. The duplication of a substantial portion of a copyrighted work that is available for purchase at a reasonable price.
3. Guidelines for Supplying Photocopies to Other Libraries

Each interlibrary loan department will fill photocopying requests from other libraries only if the request contains an indication of copyright compliance (CCL or CCG) on the request forms.

Requests that do not indicate copyright compliance will be returned to the requesting library with an explanation that indication of compliance with the copyright law is required in order for the request to be processed.

4. Interlibrary Loan Record Keeping

In order to ensure that the number of interlibrary loan photocopy requests for Mercer library users to which CONTU Guidelines apply complies with 17 U.S.C. Section 108(g)(2), each library will follow the following procedures:

4.1 At the fifth request in a calendar year for a photocopy from a given periodical, each interlibrary loan department will assure that each staff person within its department of the library knows that the limit of borrowing photocopies has been reached for the year.

4.2 At the fifth request in a calendar year for a photocopy from a given periodical, each interlibrary loan department will notify the appropriate departments or individuals making the request that the limit has been reached.

4.3 At minimum, each interlibrary loan department will maintain records of interlibrary loan photocopy requests filled by other libraries in title order according to the CONTU Guidelines. These records shall be retained for three full years following the end of the calendar year in which the requests are made. At the end of each calendar year, these files should be reviewed by the library directors to determine whether particular titles should be considered by the library for purchase or subscription.

V. Staff-Assisted Photocopying

For those Mercer University libraries that provide the staff-assisted photocopying service, library staff are permitted, at the request of the user, to make a single copy of no more than one article or other contribution to a copyrighted collection, periodical issue or a small part of any other copyrighted work.

The library must have a request form which bears the WARNING CONCERNING COPYRIGHT RESTRICTIONS completed and signed by the requestor for each photocopy to be made. This form will be returned to the requestor with the photocopied item.

1. What Can Be Copied

The library staff may make photocopies of library materials in response to requests from library users if the following conditions are met:

1.1 The Fair Use Criteria outlined in 2.1 of the INTRODUCTION to this document are followed.

1.2 Library users complete and sign an order form for each photocopy requested.

2. Guidelines for Copy Requests Beyond the Minimum Levels

The library staff may make photocopies of requests which go beyond the minimum levels outlined above if the following guidelines are observed:

2.1 The choice of material for classroom distribution is selective and sparing. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter, and level. (See MLA definitions outlined under REPRODUCTION FOR LIBRARY RESERVE III.2.1).
2.2 The classroom distribution of copies is limited to one copy per student and the copy must become the student's property.

2.3 Students are not assessed any fee beyond the actual cost of the photocopying.

2.4 The classroom distribution of the same photocopied material does not occur every semester, phase, or grading period.

2.5 An entire copyrighted work may be reproduced only if it has been determined that an unused copy cannot be obtained at a reasonable price. [17 U.S.C. Section 108(c)].

VI. Reproduction of Unpublished Works

Section 107 and Section 108(a)(b) of the copyright law govern the copying of unpublished works. In general, the library does not hold copyright in the letters, diaries, manuscripts, theses, dissertations, or other unpublished material among its collections.

Copyright to unpublished works is held by the author or creator, or heirs or assigns, unless a written transfer of copyright has been made to another party. Even though the donor of a collection may have transferred copyright, such transfer can be made only for the works created by the donor or by another person for whom the donor holds copyright.

Copying of substantial portions of unpublished works may constitute fair use when it is for scholarly research. When research needs require extensive copying, however, the factors listed in the INTRODUCTION must carefully be considered to ensure that such copying is justified.

When research needs require copying beyond the limits of fair use, permission to copy must be obtained from the copyright owner.


The library user must complete and sign an order form for each photocopy requested.

2. Guidelines for Reproduction for Another Library's Collection:

Section 108(b) of the copyright law allows the copying of unpublished works "for deposit for research use" in another library of the type described in 108(a). Such copies can be provided if the following conditions are met:

2.1 The request for duplication indicates compliance with the copyright law (CCL).

2.2 The library maintains a copy of the request form or correspondence.

APPENDIX A:
GUIDELINES FOR AUDIOVISUAL MATERIALS AND COMPUTER SOFTWARE

The term "audiovisual" applies to non-print materials such as films, filmstrips, CD (non-computer driven) records, audiotapes, videotapes, slides, slide tapes, and mixed media kits. Books and journals in microform, being facsimile reproductions of print materials, are not considered audiovisuals. Computer software includes all formats.

I. Audiovisuals

Audiovisual works are protected by the Copyright Revision Act of 1976. The rights of copyright include the rights of reproduction, adaptation, distribution, public performance and display. All of these rights are subject to "fair use" as outlined in the Four Criteria for Fair Use in the INTRODUCTION 2.1. Limited multiple copying privileges for classroom purposes do not apply to audiovisual works.