CONVERSE COLLEGE COPYRIGHT AND INTELLECTUAL PROPERTY HANDBOOK:
A GUIDE FOR FACULTY, STAFF, AND STUDENTS

Preface

As the policy statement in the Converse College Faculty Handbook states, “Converse College upholds U. S. copyright laws and is committed to the protection of intellectual property. Faculty are directed to follow the campus-wide policy with respect to the tests of brevity, spontaneity, and cumulative effect when using copyrighted materials. A complete statement of this policy may be obtained from the college library.” Because federal law and case law governing copyright and intellectual property rights are extremely complex and in a constant state of evolution, we have developed the following guidelines to help everyone in the Converse community answer particular questions that may arise in this important area of college life. This present handbook describes established “fair use” guidelines, including certain exemptions given to educators, and clarifies obligations and restrictions relating to such matters as obtaining permission to copy from printed materials, multimedia sources, and electronic information available through computer programs and the internet.

If the following guidelines do not provide the necessary information you are seeking, you might find the following websites a good resource for additional investigation:

Web Addresses

SUL: Copyright & Fair Use: Library Copyright Guidelines <http://fairuse.stanford.edu/library>
American Library Association: Copyright At A Glance <http://www.ala.org/washoff/copyrightataglance.html>
THE UT System Crash Course in Copyright <http://www.utsystem.edu/OGC/IntellectualProperty/cprtindex.htm>
U.S. Copyright Office Home Page <http://lcweb.loc.gov/copyright>
Copyright Information for University of Michigan <http://www.lib.umich.edu/copyright/>
MLC - Library Copyright Information <http://mlcnet.org/services/copylinks.php>

The Mickel Library can provide other resources, such as the reference text entitled Copyright Essentials for Librarians and Educators by Kenneth D. Crews published by the American Library Association. In rare instances, it may be necessary to consult legal counsel, but ultimately each member of the Converse community is responsible for complying with the requirements of laws governing copyright and intellectual property.

The first copyright law was enacted in 1790, and many revisions have subsequently expanded federal law. The 1976 revision is particularly important because of its inclusion of “fair use” guidelines for educational purposes. One of the more recent federal laws is the Digital Copyright Millennium Act, which deals with technological advances and electronic information. Because copyright law is constantly changing, the guidelines of this present handbook will also need to undergo periodic revision.

The Converse College Copyright Policy

Members of the Converse College community are prohibited from using copyrighted works in any way that is not authorized by (a) specific exemptions in the copyright law, (b) fair-use guidelines, including those specifically granted to educators in classroom settings, or (c) licenses or written permission from the copyright owner.

Faculty and staff (including secretaries and student assistants) are reminded that it is illegal to copy material for which necessary written permission to copy has not been obtained. Both the individual requesting such services and the individual performing them may be liable for copyright infringement.
Members of the Converse College community who willfully disregard the institution’s Copyright Policy do so at their own risk and assume all liability, including the possibility of disciplinary actions or legal action for copyright infringement.

“Fair Use” Guidelines

In the Copyright Act of 1976, the doctrine of “fair use” established a limited number of circumstances under which faculty, students, and other educators can make copies from copyrighted works without seeking permission. The specific exceptions are these:

**Single Copying 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;
- 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 tests of brevity and spontaneity as defined below
- The copying meets the cumulative effect test as defined below
- Each copy includes a notice of copyright

**Definitions:**

**Brevity:**

1. **Poetry:** (a) a complete poem if less than 250 words and if printed on not more than two pages, (b) From a longer poem, an excerpt of not more than 250 words.

2. **Prose:** (a) Either a complete article, story or essay of less than 2,500 words, (b) 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. (Each of the numerical limits stated above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)

3. **Illustration:** (a) One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

4. **Special works:** Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph 2 above notwithstanding, such "special works" may not be reproduced in their entirety. An excerpt comprising not more than two of the published pages of a special work and containing not more than 10 % of the words found in the text thereof may be reproduced.

**Spontaneity:**

1. The copying is at the instance and inspiration of the individual teacher.

2. 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:

1. The copying of the material is for only one course in the school in which the copies are made.

2. 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 periodicals volume during one class term.

3. There shall not be more than nine instances of such multiple copying for one course during one class term.

Prohibitions:

Notwithstanding any of the above, the following shall be prohibited:

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts are accumulated or are reproduced and used separately.

2. There shall be no 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 and answer sheets, and like consumable material.

3. Copying shall not: (a) substitute for the purchase of books, publishers’ reprints and periodicals, (b) be directed by higher authority, (c) be repeated with respect to the same item by the same teacher from term to term.

4. No charge shall be made to the student beyond the actual cost of the photocopying.

Permission for Use:

When a proposed use of photocopied material requires a faculty member to request permission, communication of complete and accurate information to the copyright owner will facilitate the request. The Association of American Publishers suggests that the following information be included to expedite the process.

- Title, author and/or editor, and edition of materials to be duplicated.
- Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material.
- Numbers of copies to be made.
- Use to be made of duplicated materials.
- Form of distribution (classroom, newsletter, etc.).
- Whether or not the material is to be sold.
- Type of reprint (photocopy, offset, typeset).

The request should be sent, together with a self-addressed return envelope, to the permissions department of the publisher in question. For purposes of proof, and to define the scope of the permission, it is important that the permission be in writing.

The process of considering permission requests requires time for the publisher to check the status and ownership of rights and related matters, and to evaluate the request. It is advisable, therefore, to allow sufficient lead time. In some instances the publisher may assess a fee for permission, which may be passed on to students who receive copies of the photocopied material.
It should be noted that acknowledging the source of the copyrighted material does not substitute for obtaining permission. The safest course is always to get permission from the copyright owner before using copyrighted material. It should also be noted that permission is required for “adaptation” of copyrighted materials, such as creating new arrangements of copyrighted musical compositions and transforming the format of an audiovisual work (such as converting a phonograph record to audio tape, a film to videotape, or a ¾ inch video tape to a ½ inch format).

Public Domain Materials

Some categories of publications are in the public domain; that is, their use is not protected by copyright law. The following types of material may be freely copied:

- U. S. publications more than 75 years old.
- Works published in the U. S. that a) were first published before January 1, 1978 and b) do not include a copyright notice.
- United States government documents issued by the Superintendent of Documents.

Once a work has acquired public domain status it is no longer eligible for copyright protection. Occasionally, scholarly publications such as journal articles include a note offering the right to copy for educational purposes.

Student Use of Copyrighted Projects Materials for Class

While the law does not specifically address student uses of copyrighted works, the Senate Report accompanying the Copyright Revision Act of 1976 identifies "special uses" by students:

"There are certain classroom uses which, because of their special nature, would not be considered an infringement in the ordinary case. For example, copying of extracts by pupils as exercises in a shorthand or typing class or for foreign language study . . . Likewise, a single reproduction of excerpts from a copyrighted work by a student calligrapher . . . in a learning situation would be a fair use of the copyrighted work." (Senate Report No. 94-473)

Based upon that statement, a consensus has developed in higher education that students may copy copyrighted works as a learning exercise. This suggests that students can integrate all types of materials into sound/slide, film, or television productions and other multimedia products. Programs made under this exemption may be submitted to the teacher for a grade and may be shown to the other students in the class, including distance learning transmission over the college’s secure electronic network in real time as well as for after-class review or directed self-study. However, the paper or product must remain the property of the student. Copies may not be retained by the teacher or the institution; it may not be shown, transmitted, or broadcast outside the classroom; and no copies may be sold or given away. Students may perform and display their own educational multimedia projects for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews. Students who wish to make copies beyond these narrow constraints, or who wish to make additional uses of their student projects, must get permission for all elements used.

The College Classroom

Because university professors were not specifically represented in the negotiation of the classroom guidelines, in 1982 the American Library Association published a Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use. In general, the Model Policy with respect to classroom uses suggests following the standard guidelines, recommending that
the distribution of the same photocopied material does not occur every semester;

only one copy is distributed for each student;

the material includes a copyright notice on the first page of the portion of material photocopied;

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

the photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work. To guard against this effect, the professor should usually restrict use of an item of photocopied material to one course and should not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner. It is reasonable to believe that fair use should apply to library reserves to the extent that it functions as an extension of classroom readings.

Copying for Library Reserve Use

Photocopying for library reserve use is not mentioned specifically in the Copyright Act. In an attempt to offer guidance to faculty and libraries, the American Library Association issued a recommendation to libraries regarding photocopying for reserve shelf activities. This model policy has been adapted for use by the Mickel Library and is described below.

At the request of a faculty member, the library may place on reserve photocopied excerpts from copyrighted works in its collection. The College believes that the library reserve shelf functions as an extension of classroom readings or reflects an individual student’s right to photocopy for his/her personal scholastic use under the doctrine of fair use. In general, the library may use photocopied materials for reserve shelf use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education requires, such as advanced independent study and research.

If the faculty request asks for only one copy to be placed on reserve, the library may place a photocopy of an entire article, an entire chapter from a book, or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

- the amount of material should be reasonable in relation to the total amount of material assigned for one term, taking into account the nature of the course, its subject matter and level;

- the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material;

- the material should contain a notice of copyright;

- the effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.)

For example, a faculty member may place on reserve, as a supplement to the course textbook, a reasonable number of copies of articles from academic periodicals or chapters from books. A reasonable number of copies will in most instances be less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students, and the length of time allowed for completion of the assignment may permit more in unusual circumstances.

In addition, a faculty member may also request that multiple copies of photocopied copyrighted material be placed on the reserve shelf if there is insufficient time to obtain permission from the copyright owner. For example, a professor may
place on reserve several photocopies of an entire article from a recent issue of Time or The New York Times in lieu of
distributing a copy to each member of the class.

Copying for Library Archives and Collections

In addition to exercising fair use rights as listed in Section 107 of the Copyright Act, non-profit libraries and archives are
authorized to reproduce copyrighted works without permission under the circumstances indicated in Section 108 of the
law and according to provisions of the Copyright Term Extension Act of 1998.

Under the following circumstances, the copyright law allows a library to make or request a copy of an entire copyrighted
work if the library has determined that an unused copy cannot be obtained at a fair price from the usual trade sources, the
publisher, copyright owner or authorized reproducing service. A copy for the library’s collection must be made or
requested for the purpose of replacing a damaged, deteriorating, lost, or stolen copy. Single copies of works or portions of
works may be reproduced and distributed by a library employee:

- if there is no direct or indirect commercial advantage;
- if the library or archive is open to the public or available to researchers working in a specific field;
- if the copy contains a notice of copyright.

Library rights under Section 108 are for isolated and unrelated reproduction or distribution, e.g., a single copy of the same
work may be distributed on separate occasions. Libraries may not engage in or knowingly be a party to the systematic
reproduction or distribution of single or multiple copies of copyrighted material. Libraries may, however, participate in
interlibrary loan arrangements under certain conditions.

Copying for Course Packs and Customized Anthologies

Copyright litigation involving academic users has focused on this type of "anthologies" (collections of articles, or chapters
bound together), which are perceived as substituting for textbooks and thus as reducing the potential market for
copyrighted publications. The Courts’ decisions in the 1989 lawsuit against Kinko’s and the 1992 lawsuit against
Michigan Document Services and James M. Smith clearly reinforce the necessity of obtaining copyright owners’
permission before producing such customized anthologies. This holds true whether the course pack is produced by an
individual or by a copying service.

More information can be obtained through the Converse campus bookstore, but some basic guidelines are as follows:

- All books, customized course packs, anthologies and books written by our professors are sold to students through
  the bookstore, not by individual professors.
- Every article or chapter in a course pack, if derived from copyrighted material, requires permission, either from
  the copyright owner (usually the publisher) or through a royalty fee paid to the Copyright Clearance Center.
- Each item in the packet also must include a notice of copyright--e.g., "Copyright 1990 by Academic Books, Inc."
  Permission needs to be requested for each semester in which the course pack is assigned.
- Adequate time (6 to 8 weeks at a minimum) should be allowed for obtaining copyright permissions. The
  College’s campus bookstore, through Xanadu Custom Publishing, is able to obtain the necessary permissions on
  behalf of the faculty or staff member. Whether a bookstore, copy center, or an individual handles requesting
  permissions from copyright holders, these must be obtained before proceeding with the compilation.
Course packs must be sold to students at or below cost. Under no circumstances can a faculty member, bookstore, or institution make a profit by selling them. The cost of a course pack includes the cost of processing copyright permissions, any royalty fees required by the copyright holder, and actual photocopying charges.

Unpublished Works

Manuscripts, letters, and other unpublished materials are likely to be protected by copyright regardless of age, even if they lack a notice of copyright. Unpublished works created before January 1, 1978 are protected through December 31, 2002, or life plus 70 years, whichever is greater. But, if the unpublished work is published before December 31, 2002, then it will be protected for life plus 70 years or until December 31, 2047, whichever is greater.

Unpublished works that belong to the Library Archives may be reproduced in facsimile format for preservation purposes or for deposit for research use in another library or archives. Copies may usually be made for individual researchers under the law’s Fair Use provisions. Ownership of the physical object does not signify ownership of intellectual property rights. Beyond individual fair use, permission must be granted.

Copying Music for Educational Purposes

Separate copyrights usually exist for sheet music and recordings of musical performances. Additional copyrights may exist for the lyrics. Music dealers usually sell sheet music in sets (e.g., band sets, chorus sets, etc.); hence, single copies may not be available, but can be ordered directly from the publisher. Copying sheet music without permission deprives the composers of royalties.

Fair use guidelines authorize limited copying and altering of sheet music. They also authorize recording student performances. What can be copied varies in accordance with circumstance as follows:

For a Performance:

- Emergency copying is permitted so long as replacement copies are subsequently purchased.
- Academic Purposes Other than Performance (single copies for personal or library reserve use).
- An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

Multiple Copies for Classroom (Non-performance) Use:

- Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.
- Music Recordings.
- A single copy may be made for the purpose of constructing aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply.
Live Performance and Media

Performances

Public performance of a copyrighted work may also constitute copyright infringement. A performance that takes place at the College will generally be considered a public performance. The following activities are permitted without first obtaining copyright permission:

Dramatic Works:

- when a performance takes place in the course of a face-to-face teaching activity (i.e. instructional performances and displays that are not transmitted);
- when it is conducted in a classroom or similar place (such as a library) devoted to instruction;
- in the case of an audiovisual work, when the copy (e.g., film or videotape) has been lawfully made. (See also the section in this handbook on Audiovisual Works.)

Performances of dramatic works at Converse College must meet the above three criteria. If in doubt, you should seek permission from the copyright holder. If the three criteria of this exception are not met, performance of a dramatic work will constitute copyright infringement.

Permission to perform a dramatic work does not automatically give license to videotape the performance and add that videotape to the College’s library or drama department collection. If the dramatic work is protected by copyright, permission is required to videotape a performance as well as to retain and distribute that videotape.

Nondramatic Works:

In addition to the exemptions discussed above, performances of nondramatic works at nonprofit educational institutions may be:

- transmitted to other classrooms and to handicapped persons unable to be present in the classrooms, if the performance and the transmission are part of the instructional program; or
- open to the public if the performance is not broadcast, the performers are not compensated, there is no admission charge, any proceeds go to educational purposes, and the copyright owner does not object in writing at least seven days before the performance.

Music

The use of music raises several issues under copyright law. First of all, when music is performed live, the performance will be governed by the rules discussed in the preceding section. When pre-recorded music is played before a group, there is not only a performance of the musical work but also of the particular recording. Under copyright law, however, the owner of a copyright in a musical recording, as distinct from the underlying composition, does not have the exclusive right to perform the record publicly. Therefore, when pre-recorded music is performed, only the performance of the underlying composition need be analyzed under the statutory provisions governing performances to ensure compliance with copyright law.
On the other hand, the owner of a copyright in a musical recording does have the exclusive right to reproduce the recording. Therefore, when pre-recorded music is copied, for example by making a tape of a song on a compact disc, the exclusive rights of both the owner of the copyright in the recording and the owner of the copyright in the composition may be infringed. The Converse Student Handbook, in the “General Information” section, prohibits “downloading from the Internet any audio video, graphic, or text material that is copyrighted without proof of proper license arrangements.”

Fair Use Rules Governing Music:

- Emergency copying is permitted to replace purchased copies that for any reason are not available for an imminent performance, provided that 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 ten percent of the whole work. The number of copies shall not exceed one copy per pupil.
- Printed copies that have been purchased may be edited or simplified, provided that the fundamental character of the work is not distorted and that the lyrics, if any, are not 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 College or individual professor.
- 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 the College or an individual professor for the purpose of constructing aural exercises or examinations and may be retained by the College or professor.

Special Fair Use Prohibitions:

- Copying to create or replace or substitute for anthologies, compilations or collective works.
- Copying of or from works intended to be "consumable" in the course of study or of teaching, such as workbooks, exercises, standardized tests and answer sheets and like materials.
- Copying for the use of performance, except as in "Emergency Copying" above.
- Copying for the purpose of substituting for the purchase of music, except as in "Emergency Copying" and "Academic Purposes" above.
- Copying without inclusion of the copyright notice that appears on the printed copy.

Audiovisual Materials

Classroom Use of Films and Videotapes:

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in 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 Copyright Act of 1976 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 . . . and that the person responsible for the performance knew or had reason to believe was not lawfully made.”

Additional text of the Copyright Act and portions of the House Report (94-1476) combine to provide the following, more detailed list of conditions [from Virginia M. Helm, *What Educators Should Know about Copyright* (Bloomington, IN: Phi Delta Kappa Educational Foundation, 1986)]:

- They must be shown as part of the instructional program.
- They must be shown by students, instructors, or guest lecturers.
- They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it is used for instruction.
- They must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
- They must be shown only to students and educators.
- They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included.

Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a face-to-face classroom setting, may not be used for entertainment or recreation, whatever the work’s intellectual content. The 1976 Copyright Law has been updated to allow closed-circuit broadcasts to a class. Our legal counsel has informed us that we can show videos to classes on an open channel on the campus cable system, when those programs are used in courses and meet the other conditions of education, even when the signal is not limited to the classroom or even to the students enrolled in the class.

*Copying Films or Videotapes:*

Permission from the copyright holder must be obtained prior to copying any copyrighted film or videotape. College departments will not duplicate any film or videotape without written authorization indicating that the copyright holder possesses all applicable rights to the work, including literary rights upon which the work is based; music rights (composition and performance); rights to all visual and graphic elements (slides, graphs, still photographs) contained in the work; and performing artists’ releases. When you obtain written authorization, make sure that the number of copies of the work that can be made and the length of time they can be retained is indicated. You should also request that the copyright holder indemnify Converse College against any infringement actions pertaining to the work.

One copy of a purchased foreign-standard videotape may be made to transfer the program to NTSC (U.S.) format. One copy of a purchased U.S. format videotape may be made for use by Converse faculty use while teaching in a foreign country.

*Copying Television Programming Off the Air for Classroom Use:*

In 1981, an Ad Hoc Committee on Copyright Law negotiated guidelines for off-air recording of broadcast programming for educational purposes. These guidelines represent the committee’s "consensus as to the application of ‘fair use’ to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention
and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs."

These guidelines are not embedded in the Copyright Act and it is unclear how courts may choose to apply them. In the absence of explicit legislative or judicial acts, strict adherence to the guidelines may serve as some protection should the issue of infringement arise.

**Filmstrips and Slide Sets:**

Copying filmstrips and slide sets in their entirety, or altering a program, requires written permission. Transferring a program to another format (e.g., filmstrip to video, filmstrip to slides) also requires permission. Copying a few frames or slides may be a fair use, if the four fair use criteria are met.

**Microforms**

Microforms (microfilms, microfiche, etc.) are protected under the copyright act. The rules governing microforms are determined by the nature of the work contained therein (e.g., a literary work, graphic work, etc.). Microform copies of old books, periodicals, and manuscripts may be copied freely if the original works are in the public domain. If the original publication is copyrighted, copies may be made using the rules that apply to books and periodicals.

**Sound Recordings (Other Than Musical)**

Cassettes or disks may not be copied unless all of the following conditions are met:

- the library currently has or had the item in the library’s collection;
- the library’s copy is lost, damaged, deteriorating, stolen, or its current format is obsolete;
- a replacement recording from a commercial source cannot be obtained at a fair price.

For example, the fact that a replacement cannot be obtained at a fair price does not entitle students and faculty to make copies of copyrighted audiotapes in the Mickel Library collection. Recording brief excerpts is considered fair use, however.

**Art Works**

Art works are subject to copyright. The duplication of such works in their entirety by photography, sketching, rendering, casting, or printing is a violation of the copyright law. The only exception is for copying illustrations in a book or periodical under the terms of the “Fair Use” guidelines for copying described earlier in this handbook or the library photocopying section of the law.

**Electronic Information And Computer Software**

**Internet Use and the Web**

Internet use and intellectual property rights are the subject of current intense debate, and there are no guidelines other than those we may infer from the use of other media. Use of the Internet, specifically the ease with which data can be transmitted to others and/or altered without permission, gives rise to concerns regarding intellectual property in the global information infrastructure. If you send a message on the Internet you hold the copyright, but realistically you must expect that others will forward it to other users. Material copyrighted to others should not be used other than under fair use, nor
should Internet users forward information that they suspect is copyrighted. When creating home pages on the Web, care should be taken not to incorporate copyrighted material, because mounting on the Web is often interpreted as providing multiple copies, not the single copy allowed under fair use. Privacy rights of individuals, e.g., subjects of photographs, must be observed.

**Compliance with the Digital Copyright Millennium Act**

As an Online Service Provider (OSP), Converse College is required by the Digital Copyright Millennium Act of 1998 to establish limitation of liability for copyright infringement by way of our online Internet service provider, InfoAv. We comply with the law by

- designating an agent to receive statutory notices from copyright owners about infringements and to send statutory notices to affected subscribers;
- advising the Copyright Office of the agent’s name and address and posting that information on the OSP’s website;
- developing and posting a policy for termination of repeat offenders and providing network users with information about copyright laws;
- complying with "take down" and "put back" notice requirements;
- ensuring that the system accommodates industry-standard technical measures used by owners to protect their works from unlawful access and copyright infringement.

As an OSP, Converse College has limited liability for copyright infringement by third parties, which may include faculty under some circumstances. Limitation of liability applies to the College as an institution, not to individuals. The Act determines that the knowledge or actions of a faculty member will not be attributed to the institution when all of the following conditions are met:

- the faculty member’s infringing activities do not involve providing online access to course materials that were required or recommended during the past three years;
- the institution has not received more than two notifications over the past three years that the faculty member was infringing;
- the institution provides all of its users with information describing and promoting compliance with copyright law.

The statutory rules do not require the College actively to monitor material on the Internet. The limitation requires an OSP to take action when it has "actual knowledge" of an infringement (by facts brought to its attention or by notice from the copyright owner), but it does not impose the burden on the OSP to monitor or discover infringing behavior. The law also gives immunity from third party user claims, provided there is good faith compliance with the statutory rules.

**Multimedia**

We define multimedia as a computerized format that combines various types of media, including but not limited to graphics, film, sound, television, and text. Some see it as a newly emerging format, but the combining of media in multimedia’s predecessor, audiovisual presentation, is not new. How copyright and intellectual property rights are defined in this format, however, is currently a matter of intense discussion. There is little, if any, case law providing definitive parameters. In addition, we must be aware of other pertinent concepts, such as privacy rights and complex contracts, which protect individuals.
For use in a class as part of a syllabus, you will be relying on precedents in copyright established for other formats. They require that the multimedia be presented only in the classroom setting to class members and the instructor. If you are planning to use the multimedia package in other settings, you need to be aware of the need to get permission for all clips of any kind that you are using. You may be taking profit away from those who own the intellectual property and distribution rights. Furthermore, as with all graphics, especially photographs, you must respect privacy rights of individuals portrayed, and permissions must be gained.

**Computer Software**

Converse College negotiates site licenses with software vendors whenever possible for software products that are selected for extensive use. These arrangements provide the College community with efficient access to computer programs that support the curriculum while assuring the copyright owner a fair royalty. Check with Information Technology Services to determine the availability of particular software and the license restrictions that apply.

Other products may be licensed on an individual or limited basis. However, copying is strictly limited except for backup purposes. The Copyright Act allows the purchaser of software to:

- make one and only one copy of software for solely archival purposes in case the original is destroyed or damaged through mechanical failure of a computer. However, if the original is sold or given away, the archival copy must be destroyed;
- make necessary adaptations to use the program;
- add features to the program for specific applications. These improvements may not be sold or given away without the copyright owner’s permission.

Printed documentation is covered by copyright as indicated inside each volume of documentation.

In many cases, software may be lent 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. Check the software license for restrictions. Circulating software in the Mickel Library collection must include, and computer labs and other public facilities must post, the following warning to caution against illegal copying of software:

**Software Copyright Warning**

Software is protected by the copyright law. In general, software may not be copied without the copyright owner’s permission. Read the software license for further restrictions that may apply.

Converse College strictly prohibits the illegal copying of software. You will be held liable for damages from the illegal duplication of software. Violators will be referred to the College’s judicial process.

Copyright law presently is acknowledged to be inadequate in relation to the complexities of software use. EDUCAUSE, a nonprofit organization that supports the use of technology in education, launched the EDUCOM Software Initiative, which developed a statement of principle intended for use by individual colleges and universities and which is endorsed by Converse College.
The EDUCOM Code

Software and Intellectual Rights

Respect for intellectual labor and creativity is vital to academic discourse and enterprise. This principle applies to works of all authors and publishers in all media. It encompasses respect for the right to acknowledgment, right to privacy, and right to determine the form, manner, and terms of publication and distribution.

Because electronic information is volatile and easily reproduced, respect for the work and personal expression of others is especially critical in computer environments. Violations of authorial integrity, including plagiarism, invasion of privacy, unauthorized access, and trade secret and copyright violations, may be grounds for sanctions against members of the academic community.

Software Classifications:

The EDUCOM Code defines four broad classifications of software and applies different principles to each classification as follows:

COMMERCIAL SOFTWARE - software for which a license has been purchased allowing use. Minimally, the license will stipulate that the software is covered by copyright; one backup copy of the software may be made, although it cannot be used unless the original package fails or is destroyed; and modifications to the software are not allowed. Other restrictions may apply; read the license for specific limitations.

SHAREWARE - the copyright holder specifically allows you to make and distribute copies of the software, but demands payment if, after testing the software, you adopt it for use. In general, all license restrictions for commercial software apply. Selling software as shareware is a marketing decision and does not change the legal requirements with respect to copyright.

FREEWARE - the conditions for freeware are in direct contrast to generally understood copyright restrictions. Although the software is covered by copyright, the license allows for free use, modification, and distribution of the software as long as the purposes are not for profit and credit for the original work is given to the copyright holder.

PUBLIC DOMAIN - software for which the copyright holder has explicitly relinquished all rights to the software. It must be clearly marked as "Public Domain." Since March 1, 1989, all works assume copyright protection unless the "Public Domain" notification is stated.

Computer Scanning

Computer scanning is the process of entering books, periodicals, art works, etc., into a computer by means of an optical scanner. Once a work is entered in the computer, it can be edited, manipulated, and reproduced. Scanning a text may be a fair use if it is used only for research (e.g., for textual analysis). Except for research uses, any other scanning of copyrighted texts requires the permission of the copyright holder. The Library will not put scanned text on electronic reserve without permission. Faculty should not scan text and mount it on their Web pages without permission unless the material is in the public domain. Art works should not be scanned without permission unless they are in the public domain. Scanning by students as a learning exercise may be permissible, but the copies should be promptly erased.

Database Downloading

Downloading involves copying a data transmission from a database utility to a user’s computer. This shortens the "connect time," which is the basis for most user fees. It also enables the searcher to clean up the data before printing a copy. Databases are copyrightable, and copying from a database to a computer appears to be a copyright infringement.
Downloading, Data Bases, and Long-Term Retention

The copyright owners generally accept temporary downloading as a fair use as long as only one report is printed and the data is erased after printing the report. The problem centers on long-term retention of data to reuse or to combine to create a local database. Long-term retention for any purpose requires a downloading license. These licenses are offered by most database utilities.

“Most commercial databases, whether available on-line or electronically, or on CD-ROM, include a copyright notice on the terminal screen and on printouts and downloaded files. Further, license agreements include a notice of copyright and usually refer to the fair use provisions of the copyright law. Virtually all of the basic license agreements forbid resale of data retrieved from on-line searching or any kind of commercial use without permission from the on-line vendor. Most on-line databases permit a disk copy to be made for a user, although some are beginning to restrict how many lines or entries can be downloaded. Under the statute, if it is permissible to print information from the databases for the user, it is permissible to give the user a disk containing the information unless the license agreement specifically prohibits downloading. There generally seems to be some understanding on the part of the vendors that users can download ‘insubstantial portions’ of the database, but there is little information as to what particular vendors believe constitutes an insubstantial portion of a database. Virtually all vendors say that the data is for personal use only and may not be transmitted or sold.” (Reprinted from Libraries and Copyright: a Guide to Copyright Law in the 1990’s, Laura N. Gasaway and Sarah K. Wiant (Special Libraries Association, 1994))

Intellectual Property Law Governing Employee Creative Works

Keep in mind: the law provides for fair use; educators should exercise these rights. The law also guarantees owners’ rights; educators, many of whom are also creators and owners, must respect these rights. Individuals who disregard copyright law put themselves legally and financially at risk. Other matters relating to intellectual property – such as patents, ownership of faculty–created software programs, and instructional materials produced under special contracts – should be discussed with the appropriate Converse dean or administrator. However, the college policies for creative works produced faculty and other outlines below:

**Intellectual Property Guidelines**

All employees of Converse College, faculty and administrators, shall conduct their activities on behalf of the College, including but not limited to any research or writing activities, in such a fashion so as to meet and comply with all the requirements of the United States copyright laws and regulations (Title 17, U.S.C.). Copies of relevant laws and regulations are available in the library.

As a condition of employment, each employee agrees to accept responsibility for reading and understanding the applicable requirements of the copyright law and for complying with those requirements. In the event that a copyright infringement occurs as a result of the acts of an employee, if the employee is able to demonstrate good faith in compliance with the law, the employee shall not be required to indemnify the College for any damages, judgments or costs against the College for the acts of an employee.

If however, an employee willfully, intentionally, negligently, or without good faith violates the copyright provisions, the employee shall be solely liable for all losses, damages, judgments, and costs of whatsoever kind or nature that may be incurred. Should Converse College, its officers, employees or agents be named in any legal or equitable action arising from such wrongful infringement, the employee agrees to save, hold harmless, and indemnify each of them against all losses, damages, fees (including attorney fees), or other fees, monetary or otherwise, that may be incurred as a result of such conduct.

It is the policy of Converse not to interfere with the long-standing and traditional rights of the faculty and staff to write, create, produce or otherwise generate works or products which are copyrightable, patentable, or of commercial value, on
their own initiative. Any such materials written, created, produced, or otherwise generated by a member of the faculty or staff shall remain the exclusive property of the faculty or staff member, and that person shall have the sole right of ownership and disposition, unless the materials are written, created, produced or otherwise generated “for hire.”

Materials written, created, produced or otherwise generated “for hire” are defined as inventions, creations, manuscripts, or other works or things of commercial value which are written, created, produced or otherwise generated by persons, including but not limited to faculty and staff members, who are engaged by the College specifically to write, create, produce or otherwise generate such materials or to conduct the research or other activity which produced anything included in the material(s); or are released from other College responsibilities in order to write, create, produce or otherwise generate materials. Works “for hire” are the exclusive property of the faculty member unless the College, in the process of engaging the faculty member in a work “for hire”, comes to some other agreement with the faculty member.

Copyrightable materials include but are not limited to books, pamphlets, brochures, or other printed materials; films, video or audio tapes; computer programs or computer-based instructional materials; musical compositions; and any and all copyrightable materials covered by the copyright laws of the United States or any foreign government, as amended. Patentable works include but are not limited to inventions, creations and any and all things patentable under the patent laws of the United States or any foreign government, as amended. Materials of commercial value are any materials which the College, in its sole discretion, determines to have commercial value.

Materials written, created, or produced or otherwise generated pursuant to or under the sponsorship of an outside agency or government and under the auspices of a College grant shall be subject to the copyright, patent, and exploitation terms and conditions of said subject grant, contract, or agreement. If no such terms and conditions are stated, then the materials produced by the faculty, staff member, or student, shall be subject to the terms of his policy.

A faculty, staff member, or student, may voluntarily offer to dedicate materials to the College for securing of a copyright or patent and/or the subsequent exploitation of the materials under College aegis. If such an offer or dedication is accepted by the College, faulty, staff member, or student, shall assign all of his/her rights in and to the materials to the College and shall thereafter be entitled to receive a mutually agreed percentage of the net profits, if any, derived from the commercial exploitation or dissemination of the materials.

Copyrightable Intellectual Property: Additional Guidelines

Responsibility for Disclosure of Copyrightable Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give faculty members the right to retain ownership of their copyrightable intellectual property. This policy protects that traditional right. Creators are not obligated to disclose the creation of copyrightable intellectual property, even when the product might have commercial value, unless the copyrightable intellectual property was developed under one of the qualifying conditions listed in this Handbook, in which case the creator shall disclose the copyrightable intellectual property to the College’s chief academic officer.

Except as set forth below, the creator of copyrightable intellectual property shall retain his/her rights, and the College shall not assert ownership rights. However, the creator shall grant non-exclusive, royalty-free, perpetual licenses to the College for copyrightable intellectual property that is developed for College courses or curriculum (e.g., course syllabi for campus-based or online courses), so that the College’s continued use of such copyrightable intellectual property for educational purposes would not be jeopardized. Copyrightable intellectual property that does not jeopardize continuation of the College’s educational purposes (e.g., course notes, scholarly and creative work, material subsequently converted into a textbook) is exempt from the requirement to grant a license to the College. The College will assert ownership right to copyrightable intellectual property developed under any of the following circumstances:

- Development was funded as a part of an externally-sponsored research program under an agreement which allocates right to the College.
• A faculty member or student was assigned, directed, or specifically funded by the university to develop the copyrightable intellectual property, or the College has negotiated an understanding or formal contract with the creator.

• The copyrightable intellectual property was developed by administrators or other non-faculty employees in the course of employment duties and constitutes work for hire under US law. (The following will not be considered work for hire: course notes, scholarly and creative work, and/or textbooks created by non-faculty employees as part of the teaching and learning environment.)

Under these circumstances, the creator shall assign his/her copyrightable intellectual property right to the College.

Unless otherwise directed by the supervisor, in cases where the College asserts ownership right to copyrightable intellectual property created by College personnel, the creator shall be granted a non-exclusive, non-transferable, royalty-free license to use and share that copyrightable intellectual property for non-commercial purposes for the duration of their employment by the College. Continued use and sharing of such copyrightable intellectual property following employment at Converse College requires permission from the College’s chief academic officer.

The creator of copyrightable intellectual property will be deemed to grant the College a royalty-free, non-exclusive, non-transferable, worldwide, and irrevocable license for educational or promotional use by the College of any copyrightable intellectual property that has been freely and voluntarily submitted to a College official for educational or promotional use, unless a written agreement to the contrary is established. (While the College receives a right to use this material, the creators of such material may register copyrights in their own names or assign rights to others.)

When the College has obtained rights of whatsoever kind or nature in copyrightable, patentable, or commercially valuable materials which have been written, created, produced or otherwise generated by faculty or staff members, then the terms and conditions of this policy shall be binding upon all parties in regard to the copyrightable, patentable or commercially valuable materials until all of the following conditions have been met:

1. The expiration of a minimum of two calendar years from the date of the assignment;
2. The recovery, by the College, of all expenses and costs attributable to the writing, creation, production, generation and/or exploitation of the materials;
3. The continuation of the employment of the faculty or staff member by the College plus an additional two calendar years from the calendar date of cessation of employment;
4. The expiration of the College(‘s) copyright, patent, or contract rights.

Policies pertaining to copyrights and patents may undergo revision in order to adapt legislative changes. All faculty and staff shall receive updated information in the changes as they occur.

Revised 2011