

**UNITED THEOLOGICAL SEMINARY OF THE TWIN CITIES
COPYRIGHT POLICY
2009**

It is the policy of United Theological Seminary that its faculty, staff, and students shall comply with all applicable laws pertaining to intellectual property and copyright, including full exercise of Fair Use provisions in the law (see especially Title 17 section 107, 108 and 110).¹ Excerpts from U.S. law that have particular relevance for non-profit educational institutions are appended.

Policy review process: This policy will be reviewed every three years, together with the Copyright and Fair Use Guidelines, by the Director of the Library and the EP&E Committee. The reviewed policy, with any revisions deemed appropriate, will be submitted to the Administrative Council by the Director of the Library and to Faculty Council by EP&E, with a recommendation that it be formally adopted.

Good faith efforts to facilitate compliance with the law and appropriate exercise of the rights and responsibilities therein include but are not limited to:

- The seminary will include this policy in faculty, staff and student handbooks
- The seminary will provide faculty, students, staff, and other constituent groups guidelines and educational information to assist them in interpreting their rights and responsibilities in the use of copyrighted resources. These will be available in a notebook on the Library Reserve shelves and in links from the Library Web page.
- The seminary will place on publicly available equipment that is capable of reproducing print or digital materials a notice in at least 18 pt. type about copyright restrictions:

NOTICE: THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF COPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT.

- Faculty, staff and students are expected to determine the justification for “Fair Use” of copyrighted resources prior to the use. They are to apply the four factors listed in Title 17, Section 107 (appended) in making such a determination. They are to seek permission from the copyright owner to use any type of material when Fair Use clearly does not apply, or they are not able to make a good faith determination that it does.
- No employee will direct any other employee to willfully violate copyright law.
- Faculty, students, staff, and others to whom the seminary provides access to copyrighted resources will be individually responsible for any willful

¹ See Copyright Resources notebook on Library Reserve for a sample Fair Use checklist, and for sets of guidelines discussed by a number of copyright stakeholders, resulting in varying levels of endorsement.

infringement of copyright. Willful infringement includes failure to consider the law and this policy in making a determination that a given use is Fair Use.

- Records regarding permissions, inquiries about or requests for permissions, license agreements, and inter-library loan copying shall be maintained for a minimum of 5 years following use of the material.
- The seminary will defend and indemnify faculty and staff who make good faith efforts to comply with copyright law in the context of their work at the seminary against liability claims resulting from that work.
- Anyone who uses the seminary's publicly available equipment (e.g. copiers, computers) is individually responsible for complying with copyright laws when copying or downloading print or digital resources.

OWNERSHIP OF RESEARCH RESULTS AND MATERIALS DEVELOPED FOR TEACHING AND LEARNING

Ordinarily, faculty and students shall own copyright to the materials created in the course of their research and classroom teaching or learning (e.g. lectures, papers, dissertations, presentations in fixed format). However, student lecture notes are usually "derivative works" of the lecture, and may be used only for personal educational purposes. In cases where substantial seminary resources (beyond salary) have been used by faculty for the creation and presentation of a work (e.g. a multi-media presentation created with institutionally granted funds, equipment, software, etc.) the seminary shall ordinarily have the right to retain and use a copy of the presentation, unless it has abrogated that right in negotiation with the creator.

OWNERSHIP OF OTHER WORK DONE AT THE SEMINARY

Ordinarily, work done by staff or by students employed by the seminary in the course of their employment, or by faculty at the direction of the seminary for the benefit of the seminary (e.g. Self-Study reports) shall be considered "work for hire" and copyright shall be owned by the seminary. Exceptions should be negotiated first with the supervisor, and may be granted by the President or the President's designated representative.

**APPENDIX A
EXCERPTS FROM U.S. COPYRIGHT LAW**

Summary of law regarding duration of copyright

Below is a summary of current law pertaining to duration of copyright.

1. Works under protection prior to 1978
 - 28 years from publication or registration
 - eligible for renewal for another 28 years, increased by 1976 law to 67 year term (total of 95 years)
 - copyrighted before 1950 and renewed before 1978 – automatically total 95 years
 - copyrighted between 1/1/50 and 12/31/63 must have been renewed to get 2nd term; otherwise expired at end of 28 year term.
 - Copyrighted between 1/1/64 and 12/31/77 renewal for 67 yr. term is automatic
2. Works created on or after 1/1/78 -- “life (of author) plus 70

Copyrights run through end of calendar year in which they would expire

Works already in the public domain cannot have protection restored under 1976, 1992 or 1998 laws.

[N.B. A January, 2003 decision by the Supreme Court upheld the Sonny Bono Copyright Extension Act, allowing Congress to extend copyright to the terms listed above, and rejecting the argument that such extensions violate the Constitution’s intention that copyright be for ‘a limited time’].

[A common point of misunderstanding is that a work that is unpublished or is out-of-print is not subject to copyright protections and may be reproduced at will. In-print or publication status has no relevance to copyright status, and the law requires a good faith effort to either obtain a used copy or to identify and request permission from the copyright owner for reproducing an unpublished or out-of-print work. If you are unable to locate the copyright owner or to purchase a used copy at a reasonable price, you may make a copy for your personal use only.]

I. Title 17 (Copyright Act)

Section 101: Definitions (selections)

"**Audiovisual works**" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

To **"display"** a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied

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

A **"work of visual art"** is-

(1) a painting, drawing, print or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include-

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

A **"work made for hire"** is-

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a

secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

102. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works; (*see definition above*)
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

106. Exclusive rights in copyrighted works

Subject to sections 107 through 121, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

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

107. Limitations on exclusive rights: Fair use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include-

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - (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.
- The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

108. Limitations on exclusive rights: Reproduction by libraries and archives

- (a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if-
- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
 - (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
 - (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.
- b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if-
- (1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and
 - (2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.
- (c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if-

- (1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and
- (2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays (EXCERPTS)

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

- (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;
- (2) [TEACH ACT, 2002] except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if —
 - (A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;
 - (B) the performance or display is directly related and of material assistance to the teaching content of the transmission;
 - (C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to —
 - (i) students officially enrolled in the course for which the transmission is made; or
 - (ii) officers or employees of governmental bodies as a part of their official duties or employment; and
 - (D) the transmitting body or institution —
 - (i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students

that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions —

(I) applies technological measures that reasonably prevent —

- (aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and
- (bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if —

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

In paragraph (2), the term “mediated instructional activities” with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation —

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

504. Remedies for infringement: Damages and profits (excerpt)

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. **The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.**

II. Digital Millenium Copyright Act (from Copyright Office summary)

Section 1201 divides technological measures into two categories: measures that prevent unauthorized *access* to a copyrighted work and measures that prevent unauthorized *copying* of a copyrighted work. Making or selling devices or services that are used to circumvent either category of technological measure is prohibited in certain circumstances, described below. As to the act of circumvention in itself, the provision prohibits circumventing the first category of technological measures, but not the second. This distinction was employed

to assure that the public will have the continued ability to make fair use of copyrighted works. Since copying of a work may be a fair use under appropriate circumstances, section 1201 does not prohibit the act of circumventing a technological measure that prevents copying. By contrast, since the fair use doctrine is not a defense to the act of gaining unauthorized access to a work, the act of circumventing a technological measure in order to gain access is prohibited.

[That is to say, Fair Use copying may be done from a legally acquired (usually purchased) work, even if it requires circumventing a technological measure that prevents copying. But such circumvention is not allowed in order to gain access to the work in the first place, except by a non-profit library or educational institution, and then ONLY for the purpose of making a purchase decision.]