

# COPYRIGHT COMPLIANCE POLICY

## I. STATEMENT OF COMPLIANCE.

Oral Roberts University (“ORU”) operates in compliance with the Copyright Act (Title 17 of the United States Code) which grants copyright holders some exclusive rights to uses of their works. ORU directs faculty, staff and students to comply with the Copyright Act and provides, through this policy, information and clarification on the restrictions imposed by copyright law on the use of creative works, as well as the exceptions for uses permitted under the Fair Use Clause.

Copyright is designed to promote science and the arts by protecting the rights of the creator(s) of new works to reproduce, adapt, publish, perform, and display these works. These exclusive rights are limited by the concept of “fair use” which allows the use of copyrighted works “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (U.S. Code Title 17 section 107).

## II. PROTECTION OF COPYRIGHTS.

Any original creative work that is fixed in a tangible form is protected by copyright. These include:

- Literary works;
- Musical works;
- Dramatic works;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; or
- Architectural works.

Although it was once required for works published in the United States to include a notice of copyright, protection is now automatic. Copyright is in effect the moment a work is fixed in any tangible form (including print and audio/visual/digital recordings). No copyright symbol is required for a work to be protected by copyright. The copyright holder is generally the Author(s) of the work, but copyright can be transferred to an employer or any other individual(s) or institution(s), which is usually the case in a “work for hire.”

Copyright is in effect for a limited term which varies according to the date of creation or publication. This reference table, *When U.S. Works Pass into the Public Domain*, was prepared by Dr. Laura Gasaway at the University of North Carolina and is also available and updated online (<http://www.unc.edu/~unclng/public-d.htm>):

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years <sup>1</sup> (or if work of corporate authorship, the shorter

		of 95 years from publication, or 120 years from creation <sup>2</sup>
Published before 1923	In public domain	None
Published from 1923-63	When published with notice <sup>3</sup>	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964-77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1 Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Laura Gasaway).

Materials for which the copyright has expired are in the public domain. Materials produced by the U.S. federal government are also in the public domain, although copyright restrictions may apply to government materials published by independent vendors. Materials in the public domain are free of copyright restrictions. See the Stanford University Libraries page on [The Public Domain](#) for more information. For information on music in the public domain, visit [www.pdinfo.com](http://www.pdinfo.com).

### III. FAIR USE OF COPYRIGHTED WORKS.

Copyright Law imposes certain limitations on the exclusive rights of the copyright holder. The following text is from a section known as the *Fair Use Clause*:

Notwithstanding the provisions of sections 106 and 106a, the fair use of a copyrighted work, including such use by reproduction in copies or phonographic records 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:

- A. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational 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.

In general:

- A. Use of a work for educational purposes by non-profit, accredited educational institutions weighs toward fair use, whereas use for commercial purposes weighs against fair use.
- B. Commentary, criticism, and “transformative” uses (incorporating parts of a work into a new, original presentation) weigh for fair use, whereas reproduction of a work as it was originally created weighs against.
- C. Course packs are generally not allowed, but an instructor could distribute copies of his or her own commentary on or criticism of a copyrighted work, including portions of that work for reference, provided the restrictions on amount, substantiality, and impact on marketability are honored.
- D. The use of creative works such as fiction novels, paintings, plays, music, movies and other forms of artistic expression, including materials that are as of yet unpublished, weighs against fair use. Use of factual information from nonfiction articles or books weighs for fair use.
- E. In general, using less of a work weighs more favorably toward fair use. However, in some cases, the entire work may be necessary to the use.
- F. Market effect includes the impact of the loss of sales and/or licensed usage. Uses that prevent sales weigh heavily against fair use. Copying and distributing portions of a book, for instance, that students would otherwise be expected to buy is not allowable under the Fair Use Clause. Uses that are allowed for classroom instruction under the Fair Use Clause might require permissions and licensing if used for other purposes, such as a book published for the commercial market.

ORU students, faculty and staff are directed to the guidelines listed below for help in utilizing the provisions of the Fair Use Clause. These have been developed to help users determine how much and for what purpose another’s work may be used under the provisions of the Fair Use Clause without seeking permissions and paying royalties:

- A. The Agreement on Guidelines for Classroom Copying in Not-for-profit Educational Institutions with respect to books and periodicals\* developed by an Ad Hoc

Committee to establish specific *minimum* quantities for copies (visual and sound) allowed by Fair Use and submitted to the House Judiciary Subcommittee on March 19, 1976;

B. Guidelines for Educational Uses of Music \*;

C. Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes\*;

D. ALA Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use posted on the website of The Coalition for Networked Information;

E. Using Software: A Guide to the Ethical and Legal Use of Software for Members of the Academic Community posted on the website of The Coalition for Networked Information;

F. Library and Classroom Use of Copyrighted Videotapes and Computer Software by Mary Hutchings Reed and Debra Stanek, American Library Association, 1986, archived on the website of The International Federation of Library Associations (IFLA); and

G. Fair Use Guidelines for Educational Multimedia, produced by the Educational Multimedia Fair Use Guidelines Development Committee, 1996, and included in the University of Texas Copyright Crash Course.

\*These guidelines are included in Circular 21-Reproduction of Copyrighted Works by Educators and Librarians issued by the United States Copyright Office and are provided in the Appendix.

#### **IV. DIGITAL MILLENNIUM COPYRIGHT ACT (DMCA).**

The DMCA, Title II, Section 512(c)(3) was enacted in 1998. In accordance with its provisions to limit the liability of non-profit institutions of higher education for copyright infringement committed by their faculty or students, allegations of copyright infringement by users of the ORU network will be investigated. Any users of the ORU network determined to have infringed the copyrights of others will be subject to disciplinary action, including immediate termination of online access, employment and/or enrollment. Copyright holders who believe ORU users are infringing their copyrights should send notification to:

Peter Kovaleski  
DMCA Compliance Officer  
Oral Roberts University  
7777 South Lewis Avenue  
Tulsa, OK 74171  
Phone (918) 495-7092  
pkovaleski@oru.edu

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## **V. TEACH ACT.**

The Technology, Education and Copyright Harmonization Act of 2002 is an amendment to Section 110(2) of the Copyright Act. It facilitates distance education by allowing for the display and transmission of copyrighted materials such as movies, music, text, and images via broadcasting, the Internet, or classroom management systems, provided:

- A. the institution is a non-profit accredited educational institution;
- B. the Online class is actively supervised by a faculty member or instructor;
- C. the material used is relevant to a lesson in the class and comparable to what would be used in the classroom;
- D. the material is obtained legally;
- E. material created and marketed for online instruction is properly purchased or licensed;
- F. analog materials are digitized only if no digital copy free of technical protections is available;
- G. the use is consistent with the provisions of the Fair Use Clause;
- H. access to the material is restricted to students enrolled in the class;
- I. reasonable measures are in place to prevent retention and further dissemination of copyrighted materials;
- J. notice of copyright is provided, e.g., “The materials on this course site may be copyrighted and are for use only by students enrolled in the course for purposes related to the course. They may not be retained or further disseminated”;
- K. there is no interference with the copyright holder's technological measures to prevent retention and dissemination; and
- L. the institution has a policy of copyright compliance that is disseminated to its faculty, staff and students.

## **VI. CHAPEL.**

ORU uses Christian Copyright Licensing International for copyright clearances for music and lyrics copied or projected for chapel or other worship services. Public Performance as a part of religious services is explicitly allowed under copyright law.

## APPENDIX

### *Agreement on Guidelines for Classroom Copying in Not-for-profit Educational Institutions with Respect to books and Periodicals*

#### **I. 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. 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, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

#### **II. 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:

- A. The copying meets the tests of brevity and spontaneity as defined below;
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright.

#### **III. DEFINITIONS.**

Brevity

- A. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- B. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (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 in “A” and “B” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]
- C. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

D. "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 "B" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than ten percent of the words found in the text thereof, may be reproduced.

#### Spontaneity

- A. The copying is at the instance and inspiration of the individual teacher, and
- B. 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

- A. The copying of the material is for only one course in the school in which the copies are made.
- B. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- C. There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in "B" and "C" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

#### **IV. PROHIBITIONS AS TO I AND /I ABOVE.**

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

- A. 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 there from are accumulated or reproduced and used separately.
- B. 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 and test booklets and answer sheets and like consumable material.
- C. Copying shall not:

1. substitute for the purchase of books, publishers' reprints or periodicals;
2. be directed by higher authority;
3. 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.

## **V. GUIDELINES FOR EDUCATIONAL USES OF MUSIC.**

### **A. Permissible Uses**

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.
2. 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 (10) percent of the whole work. The number of copies shall not exceed one (1) copy per pupil.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. 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 an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

### **B. Prohibitions**

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. 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 material.

3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

## **VI. GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES.**

A. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

B. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

C. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days-not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions-within the forty-five (45) calendar day retention period.

D. Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

E. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

F. After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student

exhibition or any other non-evaluation purpose without authorization.

G. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.