

To: All Kettering University Employees
From: Dr. Charles D. Hanson; Director of Library Services
Subject: Annual reminder about copyrights to all Kettering University employees

This annual reminder about copyrights is required by the TEACH Act (1), the Faculty Handbook (2), and common sense. References as end-notes are provided at the end of this reminder.

Availing themselves of the permission found in Article I of the U.S. Constitution (3), Congress has crafted laws to reserve to authors a copyright in their works for a limited length of time. Thus, with exceptions, authors may collect damages from a unauthorized copying of a copyrighted work. Generally, an author may use the Federal courts to enforce their rights.

A copy authorized by an author, such as a book, may be read, sold, given away, or the like, but generally may not be copied. Authors of software often attempt to place restrictions on the use of authorized copies that may or may not be enforced by the courts, but always an archival copy may be made.

As employees of Kettering University (both faculty and staff), you must honor copyrights and not copy copyrighted works. However, statutory exceptions exist that allow copies of copyrighted material without permission of the author. The major exceptions are called “fair use” and what here will be called “educational use.” These two exceptions overlap and their essence is described in end-note 2.

Faculty members using copyrighted works as an integral part of instruction should review the content of end-note 2 with care and ensure that the reasonable limitations therein are followed. Reserve material for a course is included in the limitations, whether in paper form or electronic form (E-reserves). Members of Kettering’s Library will assist you in implementing limitations.

The following link, supplied by Kettering University’s Library, points to several copyright references and includes under the heading “TEACH Act & Fair Use” selected, relevant documents that may be used to facilitate understanding of the details attendant to the two major exceptions. A copy of this Reminder is also provided.

http://www.kettering.edu/library/copyright_restrictions.jsp

End-notes:

End-note 1. PL107-273; Division C; Title III, Subtitle C. “Technology, Education, and Copyright Harmonization Act of 2002.” Provides a new 17 USC 110(2) and 17 USC 112(f) with explanatory notes.

End-note 2. From New IPP (April 2008). Same as in earlier versions of IPP.
5.12 The use of copyrighted works of others in face-to-face instruction

One should seek permission from the copyright holder prior to the use of a copyrighted work. However, the law allows the qualified use of copyrighted works in face-to-face instruction, scholarship, or research under the doctrine of “fair use.” The statutory basis for fair use is found in 17 USC 107. The following quotation from the statute must be kept in mind:

“In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
the nature of the copyrighted work;
the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
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.”

The first factor favors fair use of another's work at Kettering University as a necessary part of face-to-face instruction. However, a use that impacts the other three factors could negate fair use. Faculty have a specific duty expressed in Section 5.2.3 to avoid the use of considerable portions of a work. Faculty must not make such extensive use of a work that it diminishes the work's market value. When a contemplated use of another's work appears adverse to the last three factors, faculty members must seek permission from the copyright holder (with the assistance of the IPO) for that use. All uses of the works of others must be cited.

5.13 The use of copyrighted works of others in distance learning – Distance Learning Policy
With the goal of availing Kettering University of the benefits of the 2002 TEACH Act (Public Law 107-273; TITLE III; Subtitle C; herein called The Act), mindful that Kettering University is a qualified institution as defined by The Act, the following is required:

- The Administration must verify that policies exist regarding copyright that promote compliance with the laws of the United States relating to copyright;
- The Administration must provide at least once a year informational materials to faculty, students, and staff members that accurately describe, and promote compliance with the laws of the United States relating to copyright including a prohibition of conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or unauthorized further dissemination of works used in distance learning;
- The Administration must (1) provide distance learning teachers with technological measures that reasonably allow only actual enrolled students to use distance learning materials; (2) provide distance learning teachers with technological measures that reasonably prevent retention of works used in distance learning in accessible form by student recipients for longer than a class session; and (3) provide distance learning teachers with technological measures that reasonably prevent unauthorized further dissemination of works in accessible form by such recipients to others; and

- The Administration establishes as policy that faculty who use copyrighted materials (without having obtained permission from the copyright holder) in electronic formats as part of distance learning do so only under these conditions:
 - The materials must be an integral part of the curriculum of an actual Kettering University course.
 - The materials must be specifically delineated by the course instructor.
 - The quantity of material provided must be comparable to that typically displayed in a live classroom session under established fair use standards.
 - Faculty must communicate to students that the materials may be subject to copyright protection and that students are not to make copies of the materials nor to permit others to use the materials.
 - Faculty must use technological measures provided by the Administration to have materials available only to actual enrolled students and only for a period of time commensurate with a class session.
 - Faculty shall not use the works of others that were specifically created for use as distance learning materials; shall not use works that the faculty member knows, or has reason to believe, are not lawfully made; and shall not convert works from analog to digital form unless no digital version of the work is available, or the digital version employs technological protection measures that prevent its use.

End-note 3. U.S. Constitution. Article I,
Section 8. The Congress shall have Power
(Paragraph 8) To promote the Progress of Science and useful Arts, by securing for limited
Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries