

BELMONT UNIVERSITY POLICY ON COPYRIGHT COMPLIANCE¹

“EVERYTHING YOU’VE ALWAYS WANTED TO KNOW ABOUT COPYRIGHT . . .”

The U.S. Constitution grants Congress the power “to promote the progress of science and useful arts by securing for limited times to authors . . . the exclusive right to their respective writings.” The purpose of copyright is to further knowledge for the public good by providing authors with economic incentive to publish their works. This economic incentive is created through protection of authors’ rights to their works. It seems that copyright compliance should be a simple matter, right? Unfortunately, if in carrying out your professional duties to “further knowledge for the public good,” you have ever tried to find out whether and under what conditions you can use, duplicate, distribute, circulate or perform a specific article, book, CD, software, video, or musical composition, you know that it isn’t that simple. Complying with copyright law can be a complicated and maddening process. Determining permissible uses of copyrighted work in educational environments quickly takes you into shadowy territory whose boundaries are disputed.

This policy has been drafted in an effort to minimize frustration with uncertainty and fear of lawsuits. It is intended to be educational and user-friendly. It does not address every possible question of copyright compliance that might arise on campus. However, this policy is a place to start any analysis of campus copyright issues. If you need assistance interpreting the policy or knowing what to do because the policy does not address your situation, please contact the Office of Administration and University Counsel at 6441

LET’S START WITH THE BASICS

Under United States copyright law as set forth in the 1976 Copyright Act, a work must be fixed in a tangible medium of expression, for example on paper, audio tape, or a computer hard drive, and be an original work displaying a modicum of creativity in order to be protected. This differs from the 1909 Copyright Act, which had three requirements to obtain protection for a work. Those three formalities were copyright notice (©), publication, and registration with the United States Copyright Office. Under current copyright law, those three formalities are no longer required to secure copyright. Copyright is secured automatically upon fixation of the work and the modicum of creativity threshold is relatively low.

Economic incentives are given to authors of works through the protections afforded by the 1976 Copyright Act. Section 106 of the Act provides a bundle of rights that defines copyright protection and gives the owner of the copyright the exclusive right 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) To perform the copyrighted work publicly;

¹ We are grateful for the willingness of the University of Georgia and the University of Texas to let us borrow ideas, structure, and content from their copyright compliance policies in drafting portions of this policy statement.

- (5) 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.

Please note that each of these rights stands alone. For example, a copyright can be infringed by merely copying a work (exclusive right number 1), even if that copy is never sold or otherwise transferred (exclusive right number 3).

Copyright applies to various materials, such as:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Copyright does not apply to the following (although trademark or patent law may provide protection):

- Titles, names, short phrases, and slogans
- Symbols or designs
- Ideas, procedures, methods systems, processes, concepts, or principles
- Facts
- Works consisting entirely of information that is common property and containing no original authorship

Ideas are not copyrightable but the expression of an idea is copyrightable.

Copyright protection only exists for a limited time. Under the 1976 Act, authors are afforded protection for their life + 70 years. In the case of joint authors (two or more people coming together to create a copyrightable work), 70 years of protection is added on to the life of the last surviving author. For Works Made for Hire, which are works specially ordered or commissioned or created under the scope of employment, the term is 120 years from the date of creation or 95 years from the date of publication, whichever expires first.

WHY BOTHER COMPLYING WITH COPYRIGHT?

Copyright owners have sued and will likely continue to sue both the individuals who took the allegedly infringing action and their university employers. As a general rule, any Belmont employee who infringes on another's copyright while performing duties in the course and scope of employment will be defended by the university. However, to be performing duties in the scope of employment, you must be following university policy and complying with any licenses that affect your use of another's works. The university may not protect conduct outside university policy or in violation of licensed uses.

The penalties for infringement can be very harsh. The court may award up to \$150,000 for each separate act of willful infringement. Willful infringement means that you knew you were infringing upon another's work, but you continued to do it anyway. If you don't know that you are infringing, you and/or Belmont may still be liable for damages — only the amount of the award will be affected. Ignorance of the law is no excuse. In addition to monetary damages, imprisonment is a potential punishment as well. And an infringer can be liable to reimburse the copyright owner for expensive attorneys' fees.

NOW THAT WE HAVE YOUR ATTENTION . . .

Not every copyrighted work requires permission before it is used. The first step in complying with copyright is to determine whether you need permission to use the copyrighted work. Ask yourself these three questions:

Question One. Is the work protected? This policy does not apply to, and anyone may freely use the following²:

- *Works in the public domain.* If a work was first published (publicly distributed) more than 75 years ago, it is safe to assume that it is in the public domain. The duration of copyright for works less than 75 years old depends on when the work was first published, whether the copyright was renewed, and when the author died. Anything created since 1978 is not in the public domain.
- *Works that lack originality.* These include logical, comprehensive compilations like the phone book and unoriginal reprints of public domain works.
- *Works created and printed by the federal government.*
- *Freeware.* Not shareware, but expressly available, free of restrictions ware.
- *Facts.* But remember the expression of facts in an author's specific format, such as a table, graph, etc., is copyrightable.
- *Ideas, processes, methods, and systems described in copyrighted works.*

Note: Because the 1976 Act does not require the three formalities that the 1909 Act did, the presence or absence of a copyright notice no longer carries the significance it once did. Older works published without a notice may be in the public domain, but for works created after March 1, 1989, absence of a notice means virtually nothing.

Question Two. If the work is protected, do you wish to exercise one of the owner's exclusive rights afforded by § 106? If you want to use the copyrighted work for any of these purposes, you will be exercising the owner's exclusive rights:

- *Reproduce.* Make a copy.
- *Create a derivative work.* Use a work as the basis for a new work.
- *Distribute a work.* Electronically distribute or publish copies.
- *Publicly perform a work.* Publicly perform music, poetry, a drama, or play a video, audiotape, or CD.
- *Publicly display a work.* Publicly display the work itself or an image of the work on a computer screen or otherwise.

² Even if copyright law does not protect all or part of a work, other laws may protect it. For example, you may need to consider rights of privacy and publicity or ask permission to use a trade or service mark. But discussion of these rights and interests is beyond the scope of this policy statement.

Question Three. If you wish to exercise an exclusive right, is your use exempt or excused from liability for infringement? If an exemption does not excuse infringement and eliminate the need to ask permission or pay fees to exercise the owner's rights, you need permission. Exemptions or excuses include:

- *Fair use.*
- *Special Rights of Libraries.*
- *Educational performances and displays.*

WHEN IS USE A “FAIR USE?”

Someone owns just about everything. Fair use allows you to use works without asking for the author’s permission. But, not as much as you might like. Sometimes you still have to ask for permission. Section 107 of the Copyright Act discusses what constitutes a “fair use.”

Determining fair use involves applying a four-factor test established by copyright law. If the use balances in favor of a fair use, then you do not need to secure permission from the copyright owner before making use of the work. But it is a balance, and is highly dependent on the facts in each situation. The transformative nature of the use and whether the use goes to the core of the work are important considerations. In addition, § 107 lays out the following four factors that are weighed in a fair use analysis:

- (1) The character of the use (is it educational or commercial use?);
- (2) The nature of the work to be used;
- (3) The amount of the work to be used; and
- (4) The effect such use would have on the market for the original or for permissions if the use were widespread.

The four-factor fair use test is not as difficult as it is uncertain — susceptible to multiple interpretations. Two people can review the same facts about a proposed use and come to different conclusions about its fairness. That's because one must make many judgments in the course of weighing and balancing the factors.

WHAT ARE SPECIAL RIGHTS OF LIBRARIES?

Section 108 of the U.S. copyright law creates special exceptions for libraries and archives. These exceptions allow Belmont's library to photocopy, duplicate, and maintain on reserve copyrighted works for the use of library patrons.

Section 108 applies to both the library/archive and the employees and has the following requirements:

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) the collections of the library/archive are (i) open to the public, or (ii) available to other researchers in a specialized field; and
- (3) the reproduction or distribution of the work includes a notice of copyright.

WHEN IS A PERFORMANCE OR DISPLAY "EDUCATIONAL?"

There is a classroom exception to the Copyright Act, which allows instructors and students to display and/or perform works in the classroom setting without prior permission. However, in order to qualify for that exception, you must comply with the following four conditions:

- (1) the performance or display is by an instructor or student;
- (2) the performance or display is in the course of **face-to-face teaching activities** in a **non-profit** educational institution;
- (3) the performance or display takes place in a classroom or similar place devoted to instruction of students of the university who are registered for the course in which the performance takes place; and
- (4) any audio or video work must be presented from a copy that was lawfully made and obtained.

Note that a performance or display is only permitted within a classroom and only to students registered for the course in which it is presented. Any other performance or display is not permitted, even if the performance or display is educational in nature. Likewise, a performance or display for the purpose of entertainment rather than instruction is not permitted, even if it is presented in a classroom and only to students enrolled in a course.

WHAT IS BELMONT'S POLICY?

Classroom Use of Printed Materials

Belmont requires that any university employee who makes copies of protected works for use in the classroom comply with copyright law by being able to show that the proposed use is "fair use" or by showing evidence of having secured permission for the use. This policy applies to all copying of protected work regardless of whether the copying occurs on campus or off campus, on privately owned copy machines or at commercial copyshops. In addition, this policy applies regardless of whether the copied material is sold directly to the student by the university employee or through The Belmont Store. Demonstrating fair use and/or showing that permission has been secured is a prerequisite to duplication of protected works by University Services and to the sale of the material through The Belmont Store.

If the work is original and the employee is the copyright owner of the work, the employee will be asked to provide a written statement of this fact and pledge that he or she will hold Belmont harmless from any copyright infringement that may be brought against the university because of the reproduction, sale, and use of the material.

Authors, publishers, and educators have developed an Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions. These guidelines are based on the four-factor fair use test. They address the classroom use of single copies, multiple copies, and anthologies of protected works. Briefly summarized, the guidelines are:

- A. Single copying** by instructors for scholarly research or teaching is permitted so long as the single copy does not exceed more than one chapter from a book; one article from a periodical or newspaper; one short story, essay, or short poem; one chart, graph, diagram, drawing, cartoon, or picture from one book or periodical.
- B. Multiple copies** for one-time distribution to students in class may be made without permission if the instructor:

- (1) Makes no more than one for each student;
- (2) Includes the notice of copyright;
- (3) Is selective and sparing in choosing poetry, prose and illustrations;
- (4) Makes no charge to the student beyond actual cost of photocopying; and
- (5) The copying meets the tests of "brevity," "spontaneity," and "cumulative effect."

The tests of brevity and cumulative effect involve a rather tedious analysis of the number of words in the excerpt and how often the multiple copies are used. The spontaneity test is easier to apply and usually dooms to failure efforts to justify as fair use the use of multiple copies without permission. The use is spontaneous if:

- a. The copying is initiated and inspired by the individual instructor; 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.

Homemade anthologies of written works, or "coursepacks" rarely meet the spontaneity test.

C. Permissions are required for copying the following:

- (1) Copying that is used to create, replace, or substitute anthologies, compilations, or collective works. (Most coursepacks are the result of copying that creates an anthology or compilation.)
- (2) Consumable works such as workbooks, exercises, standardized tests, test booklets, and answer sheets.
- (3) Unpublished works.
- (4) Materials, copies of which are used as a substitute for the purchase of books or periodicals.
- (5) Materials repetitively copied and used by the same instructor from term to term.

NEED PERMISSION?

Copyright permissions may often be obtained through a journal, publisher, author, or book's website. If no website is available, copyright permissions may be obtained by e-mail, telephone, or mail.

When creating course packs, employees may obtain copyright permission through companies that specialize in obtaining such permissions:

Lad Custom Publishing at <http://www.ladcustompub.com>

Xanadu at <http://www.xanadu.com>

Copyright Clearance Center, Inc. at <http://www.copyright.com>

The permissions process takes approximately four to six weeks. If you wish to have the Copy Center duplicate your coursepack, please plan on completing the permissions process no later than July 15 for the fall semester and November 15 for the spring semester.

WHAT IS BELMONT'S POLICY?

Audio and Video Material

(This policy statement does not apply to the performance or display of copyrighted audio and video works. It only applies to the reproduction and distribution of these works.)

Belmont requires that any university employee who makes use of copyrighted audio or video works in carrying out his or her job responsibilities comply with copyright law by being able to show that the proposed use is fair use or by showing evidence of having secured permission for the use. This policy applies to all copying of protected work regardless of whether the copying occurs on campus or off campus, on university-owned, privately owned, or commercially owned video or audio equipment.

A. Use of Off-Air Recordings of Broadcast Programming.

- (1) Representatives of educational organizations, copyright owners, and creative guilds and unions have developed Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes. These guidelines are based on the four-factor fair use test. The guidelines state permissible and prohibited uses. They interpret the minimum standards of under fair use. Uses broader than those listed below may qualify as fair use.
- (2) Copyrighted television programs may be recorded from broadcasts for the purpose of classroom or homebound instruction. These guidelines do not apply to program aired on cable channels. Recording and use should comply with the following guidelines:
 - a. Television programs may be recorded from broadcast stations and retained for a period not to exceed 45 days. After 45 days off-air recordings must be erased or destroyed.
 - b. Off-air recordings may be shown once to each class for teaching purposes and repeated once if instructional reinforcement is necessary. This use must take place during the first ten consecutive school days of the 45-day period.
 - c. Off-air recordings may be made only at the request of and used by individual faculty, and may not regularly be recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same faculty, regardless of the number of times the program may be broadcast.
 - d. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of faculty under these guidelines. Each copy is subject to all provisions governing the original recording.
 - e. After the first ten consecutive school days, off-air recordings may be used through the end of the 45-calendar-day period only for faculty evaluation purposes, i.e. to determine whether or not to include the broadcast program in the curriculum. A recording may not be exhibited for other purposes without authorization of the copyright owner.
 - f. Off-air recordings need not be used in their entirety. However, they may not be altered from their original content nor physically or electronically combined or merged to make teaching anthologies or compilations.
 - g. All copies must include the broadcast copyright notice, if any.

B. Fair Use of Copyrighted Audio and Video Works

- (1) Guidelines for duplication of copyrighted audio and video works:

- a. A faculty member may create a single copy provided that only a small part of the work is duplicated; and the use of the duplication is intended for legitimate research, student evaluation, classroom teaching, or preparation for teaching.
 - b. One duplicate is allowed to be made from an edited or shortened version of the work provided that the copied audio/video work is lawfully owned (not rented or leased) by the faculty or the university, and the intended use by the faculty owner or requester is strictly educational or scholarly.
 - c. In both a and b, fair use will dictate that such duplication be used for one semester only and that permission be secured for subsequent duplications.
 - d. Multiple copies are prohibited.
 - e. The university, as-owner of a copy of a copyrighted audio or video work (rather than as owner of the copyright) may copy the entire work solely for the purposes of replacement of the item:
 - 1) Provided the need for replacement is caused by damage, deterioration, loss or theft; and
 - 2) After reasonable effort, an unused replacement cannot be obtained at a fair price.

Otherwise, duplication of the whole work is prohibited.
- (2) Slides and Transparencies (This section deals with duplication in facsimile form of copyrighted slides/transparencies that are available for purchase, rent or lease either singly or in sets. The reproduction of printed, copyrighted material (e.g., illustrations in texts) into a slide/transparency format is determined by application of the policy on Classroom Use of Printed Materials.)
- a. The duplication of an entire slide/transparency will be considered fair use provided that:
 - 1) Only a very limited number of duplicates are allowed;
 - 2) Only a very limited portion of a set is made (if applicable); and
 - 3) The use of the duplicates is intended for use simultaneously with the copyrighted original and for legitimate research, student evaluation, or classroom teaching purposes.

NEED PERMISSION?

If you desire to copy or make other use of a copyrighted audio or video work and if that use or reproduction is not covered by the fair use guidelines described above, permission for the reproduction must be secured from the owner of the copyright to the work. It is the responsibility of each employee to secure permissions for copyrighted materials they wish to use. Permissions often take four to six weeks to secure so plans should be made with this in mind. Belmont University recommends using the clearance services of Clear Cut, Inc. (<http://clearcutsupervision.com>).

WHAT IS BELMONT'S POLICY?

Music Material

(While this policy may apply to music that is in written or recorded form, it pertains only to the copyrights of the music itself and not to any copyright that may exist in sound recordings.)

Belmont requires that any university employee who makes use of protected musical works in carrying out their job responsibilities comply with copyright law by demonstrating that the proposed use is fair use or by showing evidence of having secured permission for the use. This policy applies to all copying of protected work (whether sheet music or sound recording) regardless of whether the copying occurs on campus or off campus, on university-owned, privately-owned or commercially-

owned copy machines or audio equipment. In addition, this policy applies regardless of whether the copied material is provided free of charge or sold directly to the student by the university employee or through The Belmont Store. Demonstrating fair use and/or showing that permission has been secured is a prerequisite to duplication of protected works by University Services and to the sale of the material through The Belmont Store.

Composers, publishers, and music educators have developed an Agreement on Guidelines for Educational Uses of Music. These guidelines are based on the four-factor fair use test. The guidelines state permissible and prohibited uses. They interpret the minimum standards of fair use. Uses broader than those listed below may qualify as fair use.

- A. Educational use of copyrighted music material is considered fair use under the following circumstances:
 - (1) Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided replacement copies shall be purchased after the performance;
 - (2) Single or multiple copies of excerpts of works may be made for academic purposes other than performance, 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. In no case should more than ten percent of the whole work be copied or more than one copy made per student;
 - (3) Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics 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 university or instructor; and
 - (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 the university or instructor for the purpose of constructing aural exercises or examinations and may be retained by the university or instructor. This pertains only to the copyrights of the music itself and not to any copyright that may exist in the sound recording.
- B. The following uses of copyrighted music material are prohibited by the guidelines:
 - (1) Copying to create or replace or substitute for anthologies, compilations, or collective works.
 - (2) Copying from workbooks, exercises, standardized tests and answer sheets and other material intended to be "consumable" during a course.
 - (3) Copying for the purpose of performance, except in emergencies described above.
 - (4) Copying for the purpose of substituting for the purchase of music, except as allowed above.
 - (5) Copying without including the copyright notice that appears on the printed copy.

NEED PERMISSION?

Belmont has contracted with the Campus Custom Publishing (CCP) to secure permissions for use of printed music material. You may access this permissions service by filling out forms available from The Belmont Store. The bookstore will send the forms to CCP and notify you when permissions are received. This process takes approximately four to six weeks. Please plan accordingly.

If you desire to reproduce a sound recording of a protected work and if that reproduction is not covered by the fair use guidelines described above or described in the policy on copyrighted audio material, permission for the reproduction must be secured from the owner of the copyright. This may involve contacting both the owner of the copyright to the song and the owner of the copyright

to the audio work on which the song appears. You are responsible for securing permission for such use.

WHAT IS BELMONT'S POLICY?

Computer Software

Belmont University prohibits the improper copying, distribution, or use of contractually protected and/or copyrighted computer software. "Software" may include digital music, graphics, text, spoken word, or executable programs. "Copying" not only entails duplicating electronic files, but also takes place when a program is transferred from one device to another, sent over a network, downloaded from the Internet, or otherwise telecommunicated over long distance lines. The following prohibitions and areas of caution are to be observed by all university employees:

- A. Use of software may be restricted. For example, use of software may be restricted to a particular computer at a particular site. In such cases, permission of the copyright owner must be obtained in order to use the software on a different computer at a different site.
- B. Individual employees who acquire software for their personal use in the course of their duties at Belmont must obtain any necessary licenses. If the university purchases the software, any licenses will be in the name of the institution. Employees may not make copies of software for associates, but rather may transfer their use to a colleague. In doing so, the original user loses the right to continued use of the software and may not retain any copy of it.
- C. If the university supplies licensed software to students in the course of instruction in a classroom, then sufficient licenses must be held by the university for all computers in that classroom.
- D. If the university supplies licensed software to students in the course of instruction in other than a classroom situation, sufficient licenses must be held by the university for all students in the class and for the instructor.
- E. If more than one class is using licensed software during the same quarter, sufficient licenses must be held by the university for all such classes.
- F. Licenses for software to be used in distance education applications must specifically match the intended distribution plan. That is, the license or permission must grant the university employee the right to include the item in a distance education course application if that is the intended use. Licenses and permissions should be obtained separately for password controlled use by registered students vs. open distribution for commercially available courseware products that are not password controlled.
- G. Shareware is easily identifiable through explicit statements within the software documentation, or identification is displayed on the computer screen. Unless these explicit statements identify the software as shareware, the user should assume that it may NOT be duplicated.
- H. Software not containing a copyright notice is not necessarily in the public domain. The user should consult with the manufacturer to ensure that such software may be copied freely.

NEED PERMISSION?

If your proposed use of software requires permission of the copyright owner under the terms of this policy, you are responsible for securing that permission in writing from the copyright owner. Once again, please allow at least four to six weeks to receive a response to any request for permission.

WHAT IS BELMONT'S POLICY?

Reproduction and Circulation of Copyrighted Material at University Library

(This policy addresses instances of allowable photocopying, duplication, and reserve room use of all copyrighted materials in Belmont's library.)

Belmont University requires that all employees conform to the guidelines stated in this policy when photocopying, duplicating or placing for reserve room use copyrighted materials in Belmont's library.

A. **Reproduction of Documents and Phonorecords by Bunch Library.**

- (1) **Archival and Replacement Purposes.** It is permissible for the library to reproduce or distribute no more than one copy or phonorecord of an unpublished work for archival purposes or of a published work for replacement purposes if:
 - The reproduction or distribution is made without any purpose of direct or indirect commercial advantage, i.e. no fee can be charged;
 - The collection of the library remains open to persons doing research in specialized fields who are not affiliated with the university; and
 - The reproduction of the work includes a notice of copyright. All copies generated by the library and covered under this section must bear a copyright notice as follows: "Notice: This material may be protected by copyright law (Title 17, U.S. Code.)"
- a. **Unpublished Works.** The library may reproduce or distribute a copy or phonorecord of an unpublished work for the purposes of preservation and security, or for deposit for research use in another library or archives, if the copy currently is in Belmont's library collection.
- b. **Published Works.** The library may reproduce or distribute a copy or phonorecord of a published work solely for the purpose of replacement of the work that is damaged, deteriorating, lost or stolen, if it has determined that an unused replacement cannot be obtained at a fair price. Such a determination will require inquiries to commonly known trade sources in the United States, and ordinarily also to the publisher or other copyright holder. The copy must become the property of the user, and the library or archives must have no notice that the copy will be used for any purpose other than private study, scholarship, or research.
- c. **Application.** The rights under this paragraph (1) extend to any type of work, including photographs, motion pictures and graphic or sculptural work. However, these media are not included in paragraphs 2, 3 and 4 of this section (A).
- (2) **Articles and Small Excerpts.** The university library is authorized to reproduce and/or distribute a copy of not more than one article or other contribution to a copyrighted collection or periodical issue, or of a small part of any other copyrighted work. The copy may be made by the library where the patron makes his or her request, or by another library pursuant to an interlibrary loan. The copy must become the property of the user, and the library or archives must have no notice that the copy will be used for any purpose other than private study, scholarship, or research.
- (3) **Multiple Copies and Systematic Reproduction.** The rights of reproduction and distribution described in this policy extend to the isolated and unrelated production of a single copy of the same material on separate occasions. The rights do not extend to cases where the library is aware or has substantial reason to believe that it is engaging in related or concerted reproduction of multiple copies of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group.

- (4) **Exemption.** The library and its employees are specifically exempted from liability for the unsupervised use of reproducing equipment located on the premises, provided that the equipment displays a notice that the making of a copy may be subject to the copyright law. This exemption does not extend to the person using the equipment or requesting such copy if the use exceeds fair use.

B. **Reserve Room Use of Copyrighted Materials.** The reserve room at the library functions as an extension of the classroom when it makes course readings and video and audio selections available to students.

- (1) **General Provisions.** At the request of a faculty member, the library may photocopy and place on reserve excerpts from copyrighted works in its collection if the duplication and use meets the guidelines for classroom copying contained in Classroom Copyright Compliance section of this policy. In general, library employees may photocopy and/or accept copies of materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing informal educational activities that higher education requires, such as advanced independent study and research.

Phonorecords, audiocassettes, videocassettes, other media titles, and sheet music may be placed on reserve at the library if they are legal copies with appropriate markings and identification. A copy is legal if it is an original, is a copy duplicated with permission, or is a copy of an original that satisfies the four-factor fair use test. Duplication of audio and video works will rarely be permissible under fair use. Duplication of sheet music is permissible only if it constitutes a small portion of a work (less than 10%) and is not a performable unit of the work. In both cases, it is far better to consider buying extra original copies, seeking permission to make copies, or requiring others to buy original copies of a particular work or recording.

(2) **Restrictions.**

- a. **Single Copies Placed on Reserve.** If the request calls for a single copy to be placed on reserve, the library may photocopy an entire article, an entire chapter from a book, or an entire poem.
- b. **Multiple Copies Placed on Reserve.** Requests for multiple copies to be placed on reserve should meet the following guidelines:
 - 1) The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter and level;
 - 2) The number of copies should be reasonable in light of the number of students enrolled, and the difficulty and timing of assignments (in no case to exceed five copies of any given reading);
 - 3) The material should contain a notice of copyright;
 - 4) 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.)
- c. **Anthologies.** The library will not accept anthologies of readings, also known as coursepacks, for deposit in the reserve units. Only individual articles, including reprints and photocopies, as well as books and other monographs will be accepted as reserve readings. In addition, the library will not accept "homemade" anthologies of audio or video material unless the reproduction of the material necessary to make the anthology meets the fair use test. (See Policy on Copyrighted Audio and Video Material.)
- d. **Repeated Use.** Copies of copyrighted materials may not be retained on reserve for more than one term for any faculty member unless the library receives proof from the faculty member that permission to reproduce and distribute copies in this

fashion has been granted by the copyright holder and that such reproduction complies with copyright laws.

WHAT IS BELMONT'S POLICY?

Performance or Display of Copyrighted Artistic, Musical, Dramatic, Literary, Audio and Video Works

(This policy addresses the public performance and classroom presentation of a copyrighted work by Belmont employees and students. It does not address the reproduction of a portion of the work for distribution to students.)

Belmont requires that any university employee who performs or displays copyrighted artistic, musical, dramatic, literary, audio, and video works conform such use to copyright law. Copyright law is observed when permission for the performance or display is secured from the copyright owner **or** when certain conditions outlined below are met.

A. Performances Requiring No Permission

- (1) The performance or display of copyrighted works in the classroom is permitted if the following conditions are met:
 - a. The performance is by an instructor or student;
 - b. The performance is in the course of face-to-face teaching activities (Performances or displays in distance learning courses are not currently allowed by copyright law.);
 - c. The performance is in a classroom or similar place devoted to instruction of students of the university who are registered for the course in which the performance takes place (Performances for persons who are not students even if educational in nature and performances for the purpose of entertainment rather than instruction are not protected.); and
 - d. Any audio or video work must be presented from a copy that was lawfully made and obtained.
- (2) In addition, nondramatic literary or musical works may also be shown as they are transmitted by broadcasting stations without violating the law if:
 - a. The use of the transmission is in regular or systematic instructional activities;
 - b. The content of the transmission is directly related to and of material assistance to the subject being taught; and
 - c. The transmission is made primarily for reception in classrooms or to persons with disabilities unable to be in the classroom.
- (3) Belmont's students and employees may perform or display copyrighted works of a religious nature in the course of services at a place of worship or other religious assembly without permission of the copyright owner or its licensing agent.

B. Performances Requiring Permission

All other performances of artistic, musical, dramatic, literary, audio and video works by university artists, choirs, vocalists, musicians and drama groups as well as the performance of recorded music or video works at university-sponsored events must receive the approval of copyright owners or their agents.

NEED PERMISSION?

Belmont is licensed by BMI, ASCAP and SESAC to publicly perform nondramatic musical works. These licenses permit performances by university choirs, vocalists, and musicians and permit the playing of recorded music at university-sponsored events.

Performance rights for dramatic works such as plays, operas, and musical theater productions must be secured from the appropriate source prior to performance. Such rights are usually included in rental agreements with agents of copyright owners. Contact information for these agents usually appears printed on a copy of the work itself.

Information about Belmont's rights to display copyrighted video works is usually contained in the purchase or rental agreement. Usually, videos sold or rented for educational or training purposes may be shown to any audience at Belmont. If permission to display in this manner is not included in the purchase or rental documents, information about how to secure proper permission is usually printed on the case or on the copy of the work itself.

Permission for performance or display of other copyright materials should be secured directly from the copyright holder.

You are ultimately responsible for securing permission for the performance or display of copyrighted works. We encourage you to initiate the permission process at least six weeks before intended use.

WHAT IS BELMONT'S POLICY?

Performance or Display of Copyrighted Artistic, Musical, Dramatic, Literary, Audio and Video Works for use in Digital Distance Education

(This policy addresses the digital transmission of copyrighted works by Belmont employees and students as a part of instructional activity, such as online course materials and other electronic resources.)

Belmont requires that any university employee who digitally transmits copyrighted artistic, musical, dramatic, literary, audio and video works conform such use to copyright law. Copyright law is observed when permission for a digital performance or display is secured from the copyright owner or when certain conditions outlined below are met.

Digital Transmission of Performances and Displays Requiring No Permission

The performance or display of copyrighted works through digital transmission is permitted if the following conditions are met:

- A. The performance or display fits into one of the three permitted categories:
 - (1) *Non-dramatic literary or musical works.* Transmitting performances of all of a non-dramatic literary or musical work is permitted. Examples of a non-dramatic literary work include poetry and short story readings. Non-dramatic musical works include music other than opera, music videos, and musicals.
 - (2) *Reasonable and limited portions of any other performance.* Employees may transmit selected portions of any type of audiovisual work, and any dramatic work excluded above, providing the length of the selection is reasonable and limited.
 - (3) *Displays of any work in amounts comparable to typical face-to-face displays.* Still images of all kinds may be transmitted if they would typically be displayed in a face-to-face classroom setting.
- B. In addition, the circumstances of the transmission must meet the following criteria:
 - (1) The performance or display must be:
 - A regular part of systematic mediated instructional activity;
 - Made by, at the direction of, or under the supervision of the instructor;
 - Directly related and of material assistance to the subject being taught; and

- Transmitted for students enrolled in the class, and technologically limited to enrolled students.
- (2) The institution must:
- Be an accredited, nonprofit educational institution.
 - Have policies and provide information about, and give notice that the materials used may be protected by, copyright.
 - Apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them; and
 - Not interfere with technological measures taken by copyright owners that prevent retention and distribution.

Digital Transmission of Performances and Displays Requiring Permission

- A. Digital transmission of the following copyrighted works is not permitted without permission of the copyright owner or its licensing agent:
- (1) Works primarily produced or marketed for in-class use in the digital distance education market.
 - (2) Textbooks, course packs, and other materials typically purchased by students individually.
 - (3) Works the instructor knows or has reason to believe were not lawfully made or acquired.
- B. University employees and students must receive the approval of copyright owners or their licensing agents before digitally transmitting all other copyrighted works.

Digitizing Analog Works and Copying Digital Works

- A. Employees may digitize analog works if no digital version of the work is available free of technological protections that would prevent the uses authorized in the Copyright Act.
- B. Copies of digital works may be made, but only if retained by the institution and used only for the activities authorized by the Copyright Act.

NEED PERMISSION?

Transmission rights for nondramatic musical works and dramatic works such as plays, operas, and musical theater productions must be secured from the appropriate source prior to transmittal. Contact information for agents of copyright owners usually appears printed on a copy of the work itself.

Information about Belmont's rights to transmit copyrighted video works may be contained in the purchase or rental agreement. If permission to display in this manner is not included in the purchase or rental documents, information about how to secure proper permission is usually printed on the videotape or DVD case or on the tape or DVD itself.