

DAU COPYRIGHT POLICY

1. REFERENCES:

- a. United States Copyright Act, Title 17, U.S. Code.
- b. Defense Federal Acquisition Regulation Supplement (DFARS), Subparts 227 & 252.227, revised September 6, 2007.
- c. "Reproduction of Copyrighted Works by Educators and Librarians," United States Copyright Office, Circular 21, 1995.
- d. "Fair Use Guidelines for Educational Multimedia," Educational Multimedia Fair Use Guidelines Development Committee, July 17, 1996.
- e. "Frequently Asked Questions About Copyright: Issues Affecting the U.S. Government," CENDI Copyright Working Group, 2002 (updated August 2007).
- f. DAU Directive 709, "Learning Asset Management Program (LAMP)," November 19, 2008.

2. PURPOSE: To specify Defense Acquisition University's (DAU's) policies regarding the use and ownership of copyrighted materials, and to establish standard procedures within DAU for obtaining permission to use copyrighted materials.

3. GENERAL INFORMATION:

a. What Is Copyright? "Copyright" is the exclusive right to distribute, perform, reproduce, display or create derivative works, and to grant permission to others to use "original works of authorship." Under current U.S. law, copyright ownership inherently belongs to the creator of such original works at the moment the work is created (no need to register or otherwise publicly announce ownership). Although certain exceptions apply, copyrighted works generally cannot be distributed, performed, reproduced, displayed, or used as the basis for derivative works by someone else without the permission of the copyright holder. Copyright ownership may be transferred to others.

b. What Materials Are Subject to Copyright Restrictions? Copyright protection may be given to original works of authorship, which can include: literary writings (including books, articles, memoranda, audiovisual slides, data "spreadsheets," etc.); musical works; pantomimes or choreography; pictorial, graphic or sculptural works; motion pictures and audiovisual works; sound recordings; and architectural works.

4. POLICY:

a. General Policy. It is the policy of DAU to honor copyright protections in accordance with the United States Copyright Act. DAU will therefore use copyrighted materials only with the permission of the copyright holder or, in appropriate circumstances, only after a careful,

informed determination that such permission is not required because the intended use falls within an exception permitted by the Act.

b. Works Created by DAU Employees. Under U.S. copyright law (17 USC § 105), works created by all Federal employees, including DAU employees, as part of their official duties are in the public domain and may not be copyrighted. This applies not only to printed materials, audiovisual materials, sound recordings, and so forth, but also to such things as content created for DAU websites.

c. Works Created by DAU Contractors. If a contractor creates copyrightable material in the course of fulfilling a contract with DAU, the rights to that material will be governed by the terms of the contract in accordance with DFARS Subpart 227.71 (Reference b. above). In most cases, DAU will acquire only a non-exclusive license to use the material, with the copyright remaining with the creator-contractor. Where DAU has a specific need to control the use or distribution of works first created in the performance of the contract, the contract will specify via a “special works clause” that DAU will have exclusive copyright ownership of the materials at issue.

5. RESPONSIBILITIES:

a. Deans and Directors of the Learning Capabilities Integration Center (LCIC), Global Learning and Technology Center (GLTC), and Acker Library: Each Dean, and the Directors of LCIC, GLTC, and the Acker Library will:

(1) Designate someone to serve as the “Copyright Clearance Facilitator” (CCF) within their respective region or department. (Deans and affected Directors may designate more than one person to receive CCF training and to assist with CCF duties if desired.) As described below, it will be the responsibility of each CCF to obtain copyright permission for the use of copyrighted materials, other than those that may be used without permission pursuant to one of the relevant Copyright Act exceptions (17 U.S.C. §§ 107-110), for courses, programs, or activities within their respective region, department or functional area. CCF duties will normally be performed in addition to other duties and responsibilities. [Note: copyright services for the Office of the DAU President, OPS, PPLS, and PRM will be provided by Acker Library.]

(2) Monitor their Learning Asset Managers to ensure that copyrighted materials are used only with the permission of the copyright holder or, in appropriate circumstances, only after a careful, informed determination that such permission is not required. A “careful, informed determination” in this context means that: (a) no permission is required because the government already has use rights for the material; (b) the proposed use satisfies the “classroom presentation” criteria at 17 U.S.C. § 110; (c) the proposed use falls within the “educational fair use” guidelines at Attachment A; or that the user has obtained a determination from the DAU General Counsel that the proposed use otherwise satisfies statutory fair use criteria.

(3) Exercise personal leadership to promote compliance with copyright requirements and procedures throughout their regions and departments.

b. Learning Asset Managers: Each Learning Asset Manager will:

(1) Review all course, program, and activity materials, including any idiosyncratic materials used by individual instructors, to ensure that copyrighted material is used only with the permission of the copyright holder or, in appropriate circumstances, only after a careful, informed determination that such permission is not required. A “careful, informed determination” in this context means that: (a) no permission is required because the government already has use rights for the material; (b) the proposed use satisfies the “classroom presentation” criteria at 17 U.S.C. § 110; (c) the proposed use falls within the “educational fair use” guidelines at Attachment A; or that the user has obtained a determination from the DAU General Counsel that the proposed use otherwise satisfies statutory fair use criteria.

(2) Obtain a concurring determination from the DAU General Counsel before any course, activity, instructor, or other employee for which the Learning Asset Manager has oversight, uses any copyrighted material on a “fair use” basis (i.e., without permission of the copyright holder) if the proposed use falls outside the guidelines at Attachment A. Use of copyrighted materials that falls within the appropriate fair use guidelines at Attachment A does not require General Counsel review. Requests for a fair use determination by the General Counsel will be made in accordance with paragraph 6.b. below.

(3) Obtain (or renew, if necessary) copyright permission before any course, activity, instructor, or other employee for which the Learning Asset Manager has oversight, uses copyrighted material in a manner that falls outside a permitted exception (e.g., fair use). Learning Asset Managers will seek copyright permission by submitting a timely request for copyright clearance to their designated Copyright Clearance Facilitator. Note that the mere submission of a request for copyright permission alone does not permit the intended use of copyrighted materials; use is allowed only after the CCF confirms that permission has been obtained from the appropriate copyright holder.

(4) Where necessary, seek the assistance of his or her designated CCF to ascertain the copyright status of materials that are not clearly in the public domain.

c. Copyright Clearance Facilitators (CCFs):

(1) Upon receipt of a request for copyright permission, timely identify and contact the copyright holder to obtain permission to use the copyrighted material. Where the copyright holder requests payment of a fee in return for copyright release, ensure that this information is relayed to the requestor and that the requestor provides proper authorization to pay the fee from his or her budget official before completing the copyright transaction.

(2) Ensure that all copyright permissions are obtained or confirmed in writing (e-mail is adequate). Where copyright permission is obtained telephonically and there is no time to obtain either written or e-mail confirmation prior to the intended use, the CCF will prepare a signed memorandum to the file noting the date, time, and circumstances under which permission was granted, including the name and contact information of the person providing the copyright release. This memorandum should then be supplemented with a written confirmation from the copyright holder as soon as possible.

(3) Maintain a record of all copyright-related communications, including requests for copyright permission, follow-up letters, e-mails, or phone calls, and permission/denial notices.

(4) Upon request, determine the copyright or public domain status of materials where the copyright status is unknown.

(5) Seek advice and assistance from Acker Library staff for copyright issues as necessary. Note that the general purpose of this policy is to place the primary burden for identifying copyright holders and obtaining copyright permissions, as well as all associated copyright recordkeeping, on the CCFs. While Acker Library staff will therefore readily provide advice to CCFs upon request, they will ordinarily provide “hands on” assistance only for copyright transactions that are intractable or that require special expertise.

d. General Counsel: DAU’s General Counsel will:

(1) Provide training to DAU staff and faculty on copyright laws and DAU’s copyright policies as set forth in this directive.

(2) Arrange for initial and periodic refresher training as necessary to CCFs on how to obtain copyright permissions, including determination of copyright status for different types of media and identification/location of copyright holders.

(3) Review all requests for fair use determinations and provide concur/nonconcur response in a timely fashion.

(4) Take appropriate action to investigate and respond to third party allegations of copyright infringement by DAU or its employees.

(5) Provide general legal advice on copyright-related matters to any DAU employee or activity as necessary, including reviewing licensing agreements, non-disclosure agreements, releases, and similar provisions upon request.

e. Director, Acker Library and Knowledge Repository:

(1) Provide copyright services (researching copyrights, obtaining copyright permissions, etc.) for the Office of the DAU President, OPS, PRM, and PPLS.

(2) Ensure Acker Library staff members are trained and available to provide advice to CCFs on copyright-related issues.

(3) Provide technical assistance to CCFs for copyright matters that are intractable or that require special expertise.

f. DAU Employees Responsible for Setting Terms for DAU Contracts and Agreements:

DAU employees responsible for developing the terms and conditions for DAU procurement contracts, research agreements, partnerships, and similar undertakings will ensure that, where

necessary, appropriate consideration is given to intellectual property matters in accordance with reference b. above.

g. All DAU Employees: All DAU employees will:

- (1) Promptly report any information they receive regarding an alleged copyright violation by DAU or any of its employees to DAU's General Counsel.
- (2) Ensure that, when DAU has purchased or otherwise obtained permission to use copyrighted materials, those materials are used only in accordance with the copyright release agreement. Misuse can include such things as exceeding the number of permitted presentations or copies, unauthorized duplication of copyrighted materials (written materials, software, CDs or DVDs, etc.), installing copyrighted software on unauthorized computer platforms, unauthorized alteration of the appearance or content of copyrighted works, or continuing to use copyrighted materials after an original copyright release has expired.
- (3) Exercise caution when accepting copyrighted materials from a contractor or other vendor where the material is subject to a "licensing agreement," "end user agreement," "non-disclosure agreement," or similar writing that appears to impose specific conditions on how DAU may use the materials. Bear in mind that DAU generally is not bound to accept the "customary" licensing terms set by commercial vendors and may negotiate those terms as necessary to satisfy DAU's particular needs or to comply with Government contracting requirements. DAU employees therefore should not sign any acknowledgment or other "acceptance" document that purports to signify DAU's consent to the terms of a licensing agreement or similar document without first consulting DAU's General Counsel.

6. PROCEDURES:

a. Obtaining Copyright Permission.

- (1) Individuals requiring copyright permission for an official DAU course, program, or activity will submit a memorandum requesting copyright clearance to their designated Copyright Clearance Facilitator. A sample request memorandum is at Attachment B. Requests should be submitted as early as possible to allow maximum processing time.
- (2) If a CCF ascertains that the copyright holder demands payment of a fee in return for copyright release, the CCF will promptly relay this information to the requestor. The CCF will not complete the copyright transaction until the requestor obtains proper payment authorization from his or her budget official and notice of that authorization is forwarded to the CCF. (This may be via e-mail.) Copyright fees will be paid by the region or department having direct oversight over the course or activity for which the copyright release is being requested.

b. Fair Use Determinations.

- (1) Proposed uses of copyrighted material that fall within the fair use guidelines at Attachment A do not require review by the General Counsel.

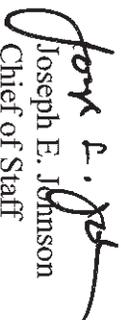
(2) Proposed uses of copyrighted material that do not fall within the fair use guidelines at Attachment A may still meet statutory fair use criteria in certain circumstances. In order to qualify for statutory fair use, the proposed use must be examined in light of four criteria: the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the material used; and the effect of the proposed use on the potential market for the original copyrighted material. No DAU employee or activity will use copyrighted material on a “fair use” basis unless the DAU General Counsel has provided a concurring determination that the proposed use falls within statutory fair use guidelines.

(3) Individuals desiring a fair use determination will submit a request memorandum to the DAU General Counsel. A fair use determination by the DAU General Counsel pertains only to the particular facts and circumstances provided in the requesting memorandum.

Consequently, it is extremely important that the requesting memorandum provide a full, precise description of the proposed use of the copyrighted material. A sample request memorandum is at Attachment C.

(4) DAU employees should not assume that a concurring fair use determination can be applied to different circumstances, regardless of the degree of similarity. The DAU General Counsel must make a separate fair use determination for each proposed use falling outside the guidelines at Attachment A.

6. FURTHER INFORMATION: Individuals having questions or concerns about DAU copyright policies, about the applicability of these policies to any particular set of circumstances, or about the general relationship of intellectual property law to any official DAU activity, should contact the DAU General Counsel.


Joseph E. Johnson
Chief of Staff

Attachments:

- A. Educational Fair Use Guidelines
- B. Sample Request – Copyright Clearance
- C. Sample Request – Fair Use Determination
- D. DAU General Counsel Memorandum, “Copyrights and Copyrighted Materials”
(includes *Copyrights: Frequently Asked Questions for DAU Employees*)

EDUCATIONAL FAIR USE GUIDELINES

DAU employees may freely use copyrighted materials without obtaining permission from the copyright holder, and without a concurring fair use determination from the DAU General counsel, where their proposed use falls within the guidelines given below.

REPRODUCTION

1. **Single Copying by Instructors (Printed Media).** Instructors may make a single copy (or have one made at his or her individual request) of any of the following for the purposes of scholarly research, teaching, or class preparation:
 - 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;
 - d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
2. **Multiple Copies for Classroom Use (Printed Media).** An instructor may make multiple copies (not to exceed more than one copy per pupil in a course) of materials as shown in the table below for classroom use *only if*:
 - a. The copying is “at the instance and inspiration of the individual teacher” (a course manager cannot order copies for all course presentations by multiple teachers);
 - 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” (e.g. the instructor sees an item in the morning paper and wants to use it in class that same day);
 - c. The copying is not used to create, or to replace or to substitute for, anthologies, compilations or collective works;
 - d. The work copied is not intended to be “consumed” in the course of study or use, such as a workbook, exercise, standardized test, mark-sense test sheet, or similar item;
 - e. The copying is not used to avoid purchasing a book, publisher’s reprint or periodical;
 - f. The copying is not directed by higher authority (e.g., dean or course manager);

- g. Copies are made from legally acquired originals;
- h. No more than one short poem, article, story, essay or two excerpts are copied from the same author, and no more than three from the same collective work or periodical volume, during one class term;
- i. There are no more than nine instances of such multiple copying for one course during one class term; and
- j. The copying of the same item is not repeated by the same teacher from term to term or course to course.

If any of the above restrictions are not satisfied, the proposed use is not within the “Educational Fair Use Guidelines” and the DAU user-educator cannot use the copyrighted material without permission from the copyright holder. If all of the above guidelines are met, then multiple copies (one per student) may be made within the limits set below:

Type	Limit	Fine Print
Prose	<ul style="list-style-type: none"> a. Complete article, story or essay if < 2500 words; or b. 10% or 1000 words, whichever is less, from any other prose work where the minimum amount copied is at least 500 words 	Numerical limits in b. may be expanded to permit completion of an unfinished paragraph.
Poetry	Complete poem if < 250 words; for longer poem, except not to exceed 250 words	Numerical limits may be expanded to permit completion of an unfinished line of a poem
Illustration	One chart, graph, diagram, drawing, cartoon, or picture per source book or periodical issue	
“Special Works”	Two published pages containing no more than 10% of words found in the text	Applies to items like children’s books or other works that combine prose with illustrations and that fall short of 2500 words in their entirety

MULTIMEDIA

The guidelines summarized above apply to reproducing printed material, either for the instructor’s own use or for distribution to students in an instructional setting. A different set of guidelines applies where an instructor or student wants to *insert copyrighted material into an educational multimedia presentation*, such as putting a Dilbert cartoon into PowerPoint slides for a classroom presentation. These “snippet” guidelines are:

- a. Prose/poetry: Limits are same as those in table above.
- b. Film/video (“motion media”): Up to 10 percent of the copyrighted work or three minutes, whichever is less. Source (CD, DVD, etc.) must have been lawfully acquired and user must give proper attribution to copyright holder. (Note: there is no limit on showing a lawfully-acquired film or video in its entirety for educational purposes, providing that it is solely for non-commercial educational purposes, the showing is not as entertainment or a “reward,” and no admission fee or “donation” is required or requested.)
- c. Illustration/photo/cartoon: No more than five images from a single artist or photographer.
- d. Images from a collected work (such as a series of wildlife photos, each by a different photographer, but all extracted from the same “coffee table” photo book): 10% of the images in the collection or 15 images, whichever is less.
- e. Music, lyrics, and music video (including musical clips from the Web): 10% of the copyrighted musical composition or 30 seconds, whichever is less.
- f. Original TV programming: Different rules apply to programs from broadcast stations (e.g., ABC, NBC, CBS, Fox) and cable stations (e.g., ESPN, CNN). While copying and re-showing is permissible in most cases for educational purposes, there are varying restrictions on how much material may be used and how long such materials can be retained. For information on “fair use” of TV materials, consult the station’s website or DAU’s General Counsel.
- g. Numerical data sets: Up to 10% or 2500 field or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project. A field entry is a specific item of information, such as a name or business address. A cell entry is the intersection of a row and column on a spreadsheet.

[Note: The guidelines for printed materials and multimedia given above are condensed from reference c., “Reproduction of Copyrighted Works by Educators and Librarians,” United States Copyright Office, Circular 21, 1995; and reference d., “Fair Use Guidelines for Educational Multimedia,” Educational Multimedia Fair Use Guidelines Development committee, July 17, 1996. While not part of the Copyright Act, both sets of guidelines are endorsed by the U.S. Copyright Office and other authorities. Copies of References c. and d. are available on the Internet or from DAU’s General Counsel.]

SAMPLE REQUEST - COPYRIGHT CLEARANCE

[Date] MEMORANDUM FOR: [Name of Copyright Clearance Facilitator]

THROUGH: [Dean or Director]

SUBJECT: Request for Copyright Clearance

I request that you obtain clearance to use the copyrighted material(s) described below:

- Identity of copyrighted material(s):
Identify the copyrighted material as completely as you can. This includes such data as the title, author, publisher, date/place of publication, ISBN number (for books), issue and page number (for magazine, newspaper, and journal articles) and any other useful identifying information. For materials found the Internet, please provide a web address to the material. If you do not know the complete identity, provide as many clues as you can. (Example: Text of keynote speech given at National Dandruff Society conference in Dallas, Texas, in May 2009.) If you are using only an extract, clearly identify the portion you want to use. (Examples: inclusive pages in a book; length in minutes/seconds of extract from film or music recording, etc.)

- Name and address of copyright holder, if known:
For printed material, this is usually the publisher. Other printed media (e.g., magazines, journals, newspapers) generally have publishing data on their “masthead” business statement located somewhere inside. CDs, DVDs, and other similar media usually have copyright information on the wrapper or “dust jacket.” If you don’t know, leave blank.
- Complete description of intended use of the copyrighted material:
This should include as much specific information as you can provide. It is important to describe the “substantiality” of the use, e.g. number of copies, showings, etc., as well as the duration of the use. Example: Copyrighted book chapter is to be included in a package of assigned readings for each student enrolled in [Course Name] for FY 2010 – estimate total 200 copies.

I understand that if the copyright holder desires payment of a fee in return for this use that you will inform me of this before you complete the clearance arrangements, and that you will only complete those arrangements after I provide you an e-mail from my budget official authorizing that payment.

[Signature]

Attachment B

SAMPLE REQUEST - FAIR USE DETERMINATION

[Date] MEMORANDUM FOR: DAU General Counsel

THROUGH: [Dean or Director]

SUBJECT: Request for Fair Use Determination

I request a legal determination regarding whether the proposed use of copyrighted materials described below appears to be permissible on “fair use” grounds in accordance with relevant provisions of U.S. copyright law:

- Identify and nature of copyrighted source:
Clearly identify the source of the copyrighted material to be used, e.g., book title, movie title, title and source of magazine article, music composition, etc. [Note: If you do not know the identity, work with your Copyright Clearance Facilitator to ascertain this information. The General Counsel will not research this for you.]

If you are using only an extract, clearly identify the portion you want to use. (Examples: inclusive pages in a book; length in minutes/seconds of extract from film or sound recording, etc.)

Include any explanatory information that might be useful to help the General Counsel appreciate the nature and “notoriety” of the material you are using. (Example: keynote speech widely reported on TV and in newspapers; complete text is posted on Dandruff Society’s webpage.)

- Complete description of intended use of the copyrighted material:
This should include as much specific information as you can provide. It is important to describe the “substantiality” of the use, e.g. number of copies, showings, etc., as well as the duration of the use. Example: Copyrighted book chapter to be included in a package of assigned readings for each student enrolled in [Course Name] for FY2010 – estimated total 200 copies.

Include any useful information about DAU course or activity, venue, and makeup of intended audience (e.g. military and civilian government employees at DAU online or resident course; mixed military, governmental, and civilian corporate attendees at conference; etc.).

- Is the material you wish to use available for commercial purchase, either from the original source or through another vendor?
If so, please identify the source from which it can be obtained, the unit cost, and

Attachment C

the total cost (if different from the unit cost) of satisfying your intended use by commercial purchase.

[Note: If you do not know whether the copyrighted material you wish to use is commercially available, work with your CCF to ascertain this information. The General Counsel will not research this for you.]

- **How “essential” is this material to you?**
Please indicate whether, if the General Counsel determines that your intended use does not fall within fair use parameters, you would nevertheless seek permission from the copyright holder to use the material because it is essential to your purpose. Alternatively, please indicate whether other, non-problematic materials may be readily substituted for the proposed copyrighted material.
- **How quickly do you need a response?**
The General Counsel strives to provide a quick turnaround (1-3 days) for all “fair use” determinations. However, some requests--especially those that have unusual circumstances or that otherwise necessitate research into copyright case law--may require additional time. Providing your “need by” date helps the General Counsel to judge how much time and legal research can be devoted to your request.

Signature
[Phone]

DAU GENERAL COUNSEL MEMORANDUM

October 26, 2010

MEMORANDUM FOR:

DAU Employees

Christine Alley
DAU General Counsel

FROM:

SUBJECT:

Copyrights and Copyrighted Materials

This memorandum supplements DAU Directive 720, "DAU Copyright Policy," and is intended to familiarize DAU employees with basic copyright law and common copyright issues. The overall goal of both documents is to ensure DAU employees are sufficiently familiar with relevant copyright restrictions--and with DAU's policies and procedures for using copyrighted material--that they do not inadvertently violate U. S. copyright law in the course of their official duties. This is a serious issue with potentially significant ramifications, as unauthorized use of copyrighted materials could expose DAU to legal liability.

Overview of U.S. Copyright Law

In the United States, copyrights are governed by the Copyright Act (Title 17 United States Code). Copyright protection may be given to original works of authorship, which can include: literary writings; musical works; pantomimes or choreography; pictorial, graphic or sculptural works; motion pictures and audiovisual works; sound recordings; and architectural works. The copyright holder has an exclusive right to distribute, perform, reproduce, display or create derivative works, and to grant permission to others to use the copyrighted material. Since 1989 copyright ownership is automatically conferred at the time a copyrightable work is created. This means the creator does not have to register with the United States Copyright Office to have a valid and enforceable copyright (although doing so helps to prove copyright ownership in the event this is subsequently disputed).

Facts, words, numbers, short phrases ("Hasta la vista, baby!"), and works already in the public domain cannot be copyrighted.¹ For example, the author or publisher of a history book cannot copyright the fact that the Battle of Lexington occurred in 1775 or the phrase "American Revolution"; a software company cannot claim exclusive ownership over the numbers 0 and 1; and a high school English teacher cannot copyright the works of William Shakespeare, which are already in the public domain. In the case of databases, factual data generally cannot be copyrighted (there are some exceptions for highly technical data); however, a particular format for organizing and displaying data, such as a unique table or spreadsheet, may be copyrighted. Similarly, a particular page layout of a Shakespeare play may be copyrighted, as may any original commentary.

Attachment D

¹ Certain names, titles, and phrases may, however, be trademarked.

Works that are not protected by copyright are “in the public domain,” meaning that anyone may use them without seeking permission from anyone else. In the U.S., the duration of copyrights depends on the type of work, where it was originally created or published, and the year in which it was created. One example: the copyright for a published literary work created in the U.S. after 2002 endures for the life of the author plus 70 years. Copyrights are renewable in certain cases.

Unauthorized use of copyrighted materials is called “infringement” and may subject the violator to legal action. In the case of minor infringement, the copyright holder may simply demand that the violator cease the unauthorized use; in more significant cases, the copyright holder can sue for monetary damages. Particularly egregious cases could constitute “criminal infringement,” which is prosecuted in federal court as a felony. Where the violator is a teacher or instructor at an educational institution, the copyright owner may be able to take legal action against the employing institution.

Works Created by Federal Employees

Under the U.S. Copyright Act (17 U.S.C. § 105), works created by federal employees as part of their official duties are in the public domain and may not be copyrighted. This applies not only to printed materials, audiovisual materials, sound recordings, and so forth, but also to such things as content created for DAU websites. Consequently, a DAU employee who writes an article for publication in a professional journal, using duty time and official resources, has no copyright interest in the resulting published article: the article may be reproduced and republished by anyone without regard for original authorship. A private educational firm may similarly avail itself of instructional materials created by DAU faculty and used in its courses.

While a private entity may freely use materials created by federal employees, it cannot assert copyright ownership over borrowed federal material because that material is already in the public domain. A private entity can, however, claim a copyright for any accompanying original material that it created. For example, a TV pitchman who offers an “insider’s guide to U.S. Government contracts” cannot copyright the pages of his book that he simply photocopied from the Federal Register or downloaded from the websites of government agencies; he can, however, copyright the introduction he wrote himself, as well as the compilation as a whole if he invested substantial creative effort in the selection and compilation of all those photocopies and downloads (thereby effectively creating a new work).

Avoiding Copyright Infringement

You can freely use a book, CD, DVD, software, or any other copyrighted material for your own personal, non-commercial use if the copy you are using was created legally (i.e., is not a “pirated” copy) and you obtained it in a legal fashion, such as by purchasing it, borrowing it from the library, renting it from Netflix, etc. Copyright infringement problems typically arise either because you have an unauthorized copy, or because you want to copy, distribute, commercially display, or otherwise use a copyrighted work for some reason other than your own personal enjoyment. It is always improper to traffic in unauthorized copies of copyrighted

materials. Aside from that, you can generally use materials created by others, without fear of legal entanglement, in five circumstances.

1. **Permission of Copyright Holder.** You can always use copyrighted materials with the permission of the copyright holder. As a first step, you should determine whether copyright permission is actually needed (i.e., your intended use does not fall within any of the other four permitted uses). If so, you must determine who the copyright holder is and then contact that person or entity to work out the terms of permitted use. Copyright holders may demand payment of a fee, and may also impose time, manner, volume, or other limitations on your use of the copyrighted material. (Example: The owner of a copyrighted magazine article gives you permission to make 30 copies of the article per year solely for use in the DAU classroom. This does not allow you to give out 500 copies at a symposium where you are a guest speaker, or to include the article as a chapter in a book you are writing.) Even with the Internet, obtaining permission to use copyrighted materials is not always easy or straightforward. **Key Point: Because of cost and inconvenience, this option should be considered a “last resort” and generally saved for situations where use of particular material is absolutely essential and the intended use does not conform to any of the categories below.**
2. **Public Domain.** Public domain materials, including any materials created by employees of the federal government within the course of their official duties, may be used without restriction and without obtaining permission from anyone. Bear in mind that while individual items may be in the public domain, collections or anthologies of public-domain works may be protected by a “collective works” copyright (the TV pitchman example above). In such a case, you may freely copy or otherwise use the individual public-domain pages or sections, but not the work in its entirety.
3. **Government Contracted Works and “Pre-existing Permission.”** In certain cases, the U.S. Federal Government (or the public generally) may already have a license to use certain copyrighted materials.
 - a. *Government contracted works.* The federal government often obtains unlimited license to use copyrighted materials created under the terms of its procurement contracts. For example, suppose that a particular U.S. Government agency hires a contractor to write a training manual for its employees. Federal procurement contracts commonly specify that, while the contractor will retain the copyright for sale, reproduction, and distribution of any copyrightable material created under the contract (in this case, the training manual) in the private sector, the government shall have a permanent license to reproduce and use the copyrighted material *across the entire federal government*, not just within the original contracting agency. DAU therefore does not have to seek permission to use copyrighted material if the federal government already has a license to use that same material. (Note that, where the contract simply procures already-copyrighted material, the government does *not* obtain a general right to use that material beyond the scope of what is provided for in the contract. For example, if DAU purchases ten copies of a commercially available

software program, it cannot make unauthorized copies of that software either for its own use or for distribution to other federal agencies.)

b. *Pre-existing permission.* Another way in which permission may already exist is via a public declaration by the copyright holder that its copyrighted material may be used without further permission provided that the user satisfies certain basic restrictions. One popular method for establishing such “pre-existing permission” is via the “Creative Commons” umbrella, which is a non-profit online registry where copyright owners publicly declare the “licensing conditions” (if any) under which their copyrighted works may be used without further permission. DAU may use copyrighted materials covered by such “pre-existing permission” declarations provided that its use complies with all relevant conditions specified by the copyright holder.²

4. **“Classroom” Exemption for Movies and Sound Recordings.** A special statutory exemption (17 U.S.C. § 110) permits an instructor or student at a non-profit educational institution to use copyrighted movies and sound recordings in the classroom during “face-to-face” instruction. The movie or sound recording must be performed from a “lawful source” (i.e. an authentic licensed DVD or CD, not a “pirated” copy).³

5. **Use in Accordance with “Fair Use” Doctrine.** One particularly useful statutory exemption is called “Fair Use” (17 U.S.C. § 107). Fair use principally encompasses two broad areas: *commentary and criticism* (a reviewer should be allowed to quote passages from a novel or movie she is reviewing without seeking permission), and *parody* (a comedian can make fun of someone’s writings, music, choreography, and so forth without permission from the copyright owner). Federal judges use four factors to evaluate whether something falls within fair use:

a. *The purpose and character of the use.* The U.S. Supreme Court has held that this is a primary indicator of fair use. Courts look to determine whether the new use was “transformative,” meaning was it used in a way that created something new, or did it simply use the copyrighted material verbatim under a different title or byline.

b. *The nature of the copyrighted work.* This evaluates such factors as whether the copyrighted material is fiction or non-fiction, and whether the original material is

² Common limitations, which may be imposed singly in or combination, include “Attribution” (others may freely reproduce, display, distribute, or perform the copyrighted work provided the copyright holder is acknowledged by name); “Non-Commercial” (only non-commercial uses are permitted); “No Derivative Works” (others may reproduce, display, distribute, or perform copyrighted work only in verbatim form; no derivative works are permitted); and “Share Alike” (others may distribute derivative works only if they are subject to an identical pre-existing license).

³ Section 110 actually permits display or performance of any type of copyrighted material in a face-to-face classroom setting. However, because it does not allow *reproducing* the original copyrighted material, which includes transferring it to another medium (such as by scanning a Dilbert cartoon and inserting it into a PowerPoint slide), its usefulness is generally limited to movies and sound recordings. Under Section 110 you could, if you wanted to, hold up a lawfully purchased book of Dilbert cartoons and point out the one you want the class to see.

published or unpublished. It is considered fair use, for example, to write a news story that summarizes the facts in a medical journal article about a new treatment for cancer; it would not be fair use to post on your website the complete text of an as-yet-unreleased draft of a new Harry Potter novel, claiming it was “news.”

c. *Amount and substantiality of the portion used.* In general, the less that is taken, the more likely it will be considered fair use. However, even that rule does not apply if the portion you take is the “heart” of the copyrighted original. For example, if you post a single paragraph from a new 800-page novel on your blog, but that paragraph happens to contain the surprise plot element on which the entire novel turns, this might not be considered fair use despite its relative “insubstantiality.”

d. *Effect of the Use on the Potential Market.* A use that unfairly deprives the copyright holder of income is not fair use. For example, someone who borrows a friend’s copy of a new motion picture DVD and burns an unauthorized copy for himself has deprived the copyright holder of the income he or she might have otherwise realized by the sale of the DVD. Similarly, someone who sneaks a video camera into the premiere of a new movie to capture it on an unauthorized videotape, adds a “voiceover” dubbing it into a foreign language, and then makes copies of the video for sale overseas in an area where an official version is not yet available in the local language, has deprived the copyright holder of potential future sales in that market. (Note that, in this scenario, the “deprived of income” factor would trump the fact that the pirated videos are arguably a “new work” because of the added foreign language voiceover.)

Unfortunately, fair use is an especially murky area of copyright law, as the rules are somewhat vague and the only way to determine for certain whether a particular use of copyrighted material is fair use is to litigate the matter in federal court. This is further complicated by the fact that judges have a great deal of discretion when applying the factors listed above. As a result, many court decisions in fair use cases are so idiosyncratic that, except in a few well-established scenarios (such as the news report based on an article in a medical journal), there often is no fool-proof legal roadmap to what is and is not fair use. **Key Point: Except for uses that are clearly within the “Educational Fair Use Guidelines” (see below), DAU personnel must obtain a concurring opinion from DAU’s General Counsel before using any copyrighted materials on “fair use” grounds.** This requirement is not meant to discourage DAU employees from using copyrighted materials on a fair use basis--after all, it would be poor stewardship for DAU to pay for something it can use without charge. Rather, the concurring opinion from DAU’s General Counsel is meant only to provide a “quality control” check to ensure that DAU’s fair-use utilizations meet reasonable legal standards.

Educational Fair Use Guidelines

In an attempt to provide greater clarity to the Fair Use rules, educators, publishers, and other copyright stakeholders have agreed on certain guidelines that provide some clear “fair use” standards for classroom use. While these guidelines are in actuality a “gentlemen’s agreement” and not part of U.S. copyright law, the Congress, federal courts, and even the U.S. Copyright

Office have all embraced these guidelines and generally regard them as setting acceptable limits for when and under what circumstances copyrighted materials may be used for educational purposes without permission of the copyright holder. **Key Point: It is not necessary for DAU employees to seek a concurring “fair use” opinion from DAU’s General Counsel when using copyrighted materials for educational purposes in accordance with the guidelines given below.**

3. **Single Copying by Instructors.** Instructors may make a single copy (or have one made at his or her individual request) of any of the following for the purposes of scholarly research, teaching, or class preparation:
 - 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;
 - d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
4. **Multiple Copies for Classroom Use (Printed Media).** An instructor may make multiple copies (not to exceed more than one copy per pupil in a course) of materials as shown in the table below for classroom use *only if*:
 - a. The copying is “at the instance and inspiration of the individual teacher” (a course manager cannot order copies for all course presentations by multiple teachers);
 - 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” (e.g., the instructor sees an item in the morning paper and wants to use it in class that same day);
 - c. The copying is not used to create, or to replace or to substitute for, anthologies, compilations or collective works;
 - d. The work copied is not intended to be “consumed” in the course of study or use, such as a workbook, exercise, standardized test, mark-sense test sheet, or similar item;
 - e. The copying is not used to avoid purchasing a book, publisher’s reprint or periodical;
 - f. The copying is not directed by higher authority (e.g., dean or course manager);
 - g. Copies are made from legally acquired originals;
 - h. No more than one short poem, article, story, essay or two excerpts are copied from the same author, and no more than three from the same collective work or periodical volume, during one class term;

- i. There are no more than nine instances of such multiple copying for one course during one class term; and
- j. The copying of the same item is not repeated by the same teacher from term to term or course to course.

If any of the above restrictions are not satisfied, the proposed use is not within the “Educational Fair Use Guidelines” and the DAU user-educator should seek permission from the copyright holder for the prospective use. If all of the above guidelines are met, then multiple copies (one per student) may be made as shown:

Type	Limit	Fine Print
Prose	a. Complete article, story or essay if < 2500 words; or b. 10% or 1000 words, whichever is less, from any other prose work where the minimum amount copied is at least 500 words	Numerical limits in b. may be expanded to permit completion of an unfinished paragraph.
Poetry	Complete poem if < 250 words; for longer poem, excerpt not to exceed 250 words	Numerical limits may be expanded to permit completion of an unfinished line of a poem
Illustration	One chart, graph, diagram, drawing, cartoon, or picture per source book or periodical issue	
“Special Works”	Two published pages containing no more than 10% of words found in the text	Applies to items like children’s books or other works that combine prose with illustrations and that fall short of 2500 words in their entirety

5. **Use of Copyrighted Material in Multimedia Presentation (“Snippet” Rules).** The guidelines summarized in 1&2 above apply to *photocopying* printed material, either for the instructor’s own use or for distribution to students in an instructional setting. A different set of guidelines applies where an instructor or student wants to *insert copyrighted material into an educational multimedia presentation*, such as putting a Dilbert cartoon into PowerPoint slides for a classroom presentation. These “snippet” guidelines are:
 - a. Prose/poetry: Limits are same as those in table above.
 - b. Film/video (“motion media”): Up to 10 percent of the copyrighted work or three minutes, whichever is less. Source (CD, DVD, etc.) must have been lawfully acquired and user must give proper attribution to copyright holder. (Note: As

previously discussed, there is no limit on showing a lawfully-acquired film or video for educational purposes, providing that it is solely for educational purposes and not as entertainment or a “reward.”)

- c. Illustration/photo/cartoon: No more than five images from a single artist or photographer.
- d. Images from a collected work (such as a series of wildlife photos, each by a different photographer, but all extracted from the same “coffee table” photo book): 10% of the images in the collection or 15 images, whichever is less.
- e. Music, lyrics and music video (including musical clips from the Web): 10% of the copyrighted musical composition or 30 seconds, whichever is less. (As previously discussed, there is no restriction on playing a copyrighted sound recording from a lawfully-acquired source, such as a music CD, for educational purposes in a face-to-face classroom setting.)
- f. Original TV programming: Different rules apply to programs from broadcast stations (e.g., ABC, NBC, CBS, Fox) and cable stations (e.g., ESPN, CNN). While copying and re-showing is permissible in most cases for educational purposes, there are varying restrictions on how much material may be used and how long such materials can be retained. For information on “fair use” of TV materials, consult the station’s website or DAU’s General Counsel.
- g. Numerical data sets: Up to 10% or 2500 field or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project. A field entry is a specific item of information, such as a name or business address. A cell entry is the intersection of a row and column on a spreadsheet.

[Note: The guidelines given in 1-3 above are condensed from: “Reproduction of Copyrighted Works by Educators and Librarians,” Circular 21, United States Copyright Office; and “Fair Use Guidelines for Educational Multimedia,” Educational Multimedia Fair Use Guidelines Development Committee, July 17, 1996. Both sets of guidelines are endorsed by the U.S. Copyright Office. Copies of these documents in their entirety are available on the Internet or from DAU’s General Counsel.]

How to Obtain Permission

The detailed procedures for obtaining permission to use copyrighted materials are explained in DAU Directive 720, “DAU Copyright Policy,” dated October 26, 2010. Under that policy, DAU Learning Asset Managers are assigned principal responsibility for assuring copyright compliance within the courses or learning activities for which they are responsible. That policy also requires each DAU Dean, as well as the Directors of LCIC, GLTC, and the Acker Library to designate a “Copyright Clearance Facilitator” (CCF) who will obtain copyright permissions for requests arising within their region, department, for functional area. The Acker

Library CCF will obtain copyright clearances for requests originating from the Office of the DAU President, OPS, PPLS, and PRM. A sample Request for Copyright Clearance is included in DAU Directive 720 at Attachment B.

How to Get Additional Information

DAU employees who have general copyright questions, or who need additional information about the application of copyright rules to a particular set of circumstances, should contact Tim Wray, DAU General Counsel, at 703-805-5403. Questions about copyright clearances should be directed to the Copyright Compliance Coordinator for your department or activity.

Attachment: Copyrights: Frequently Asked Questions for DAU Employees

Attachment:

Copyrights: Frequently Asked Questions for DAU Employees

Q1: I'm confused by all these copyright technicalities. I thought copyright rules basically stop at the classroom door and that educators can use whatever they want without regard to copyrights as long as it's for an educational purpose. What happened to that?

A: Sorry, you were misinformed. Copyright law applies in the educational context as well as any other. The good news is that a special statutory exemption (17 U.S.C. § 110) allows movies and sound recordings to be played in a face-to-face classroom setting for educational purposes without restriction, provided that they are played from lawfully-acquired media (i.e. a licensed DVD or CD, not a "pirated" copy or something you downloaded from the Internet). Also, the "fair use doctrine" allows limited uses of copyrighted materials under certain circumstances. While "fair use" law is fairly murky overall, educators may rely on a generally-agreed set of "Educational Fair Use Guidelines" that clarify when and to what extent copyrighted materials may be freely used in the classroom (see "Educational Fair Use Guidelines" in basic memo). Instructors who want to use copyrighted materials in ways that exceed what is sanctioned by the Educational Fair Use Guidelines may find they will have to obtain permission from the copyright holder.

Q2: Isn't the federal government exempt from complying with copyright laws?

A: No. Federal entities such as DAU (and their employees) have to comply with copyright laws on the same basis as everyone else. Indeed, because copyrights are governed by federal law, judges tend to place a special responsibility on the federal government to set a good example by scrupulously obeying its own laws.

Q3: I would like to show a commercial motion picture in my class to illustrate certain ethical issues in a business environment. Can I do this without obtaining permission?

A: Yes. An instructor may show all or part of a commercially-produced motion picture in the classroom in its entirety, without obtaining copyright permission, provided that the film is being shown for a non-commercial educational purpose (not entertainment, not as a reward for good performance), no admission fee or "donation" is required or requested, and the film is shown from a legal and lawfully-acquired DVD, videotape, laser disk, etc.

Q4: I'd like to assemble a set of readings for my course. The readings would include some materials I've written myself, some regulations and directives I've gotten from DoD and other federal government websites, and some articles I've photocopied from various journals and newspapers. My intention is to put this set of readings in a binder and give a copy to each student in the course. Is this okay?

A: Reading sets of this sort are referred to as "coursepacks" in copyright law. If any of the materials you want to include are copyrighted, you must obtain permission from the copyright holder to include them in your coursepack. (In the example given, that would appear to apply to

the journal and newspaper articles.) Note that this is true even if the copyrighted articles or extracts fall within the quantitative limits described in the “Educational Fair Use Guidelines” portion of the basic memo because those rules specifically prohibit copying copyrighted materials for inclusion in anthologies. Materials you write yourself as part of your official duties, as well as government regulations or publications, are in the public domain and may be freely used in a coursepack without permission.

Q5: If materials created by federal employees in the course of their official duties are in the public domain, does this mean that anybody can get access to whatever I create? What if it’s classified?

A: Works created by federal employees as part of their official duties are in the public domain for the purposes of copyright law. This means those works cannot be copyrighted by the author or anyone else. It does not mean all such works are automatically available to the public. The government does not have to disclose classified national security information, information protected by the Privacy Act, material that is exempt from disclosure under the Freedom of Information Act, or other non-public information.

Q6: Who owns the copyright for things created by a contractor working on a government contract?

A: It depends. Within DoD, Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 227.4 (Rights in Data and Copyrights), 227.70 (Infringement Claims, Licenses, and Assignments), 227.71 (Rights in Technical Data), and 227.72 (Rights in Computer Software and Computer Software Documentation) cover various scenarios regarding the ownership of copyright for works created under DoD contract. (Standard contract/solicitation clauses and provisions pertaining to intellectual property are in Subpart 252.227.) The DFARS recognizes that the contractor generally owns the copyright for works created under DoD contract (DFARS 227.7103-9, DFARS 252.227-7013-4). While a contractor may own the copyright for work produced under a DFARS contract, the government is not restricted in its use of the work. In unusual cases, the contract may specify that the government will have lesser rights.

Alternatively, if a “special works clause” is inserted into a contract (DFARS 252.227-7020), the contractor must assign the copyright to the government. Example: A songwriter writes a new recruiting jingle for the Navy. The contract includes a special works clause whereby the songwriter assigns the copyright to the Navy, thereby giving the Navy a legal right to restrict use of the jingle by other parties. (Note that, although materials prepared by federal employees as part of their official duties are in the public domain and thus not copyrightable, the U.S. Federal Government itself may receive and own copyrights.)

Q7: Who owns the copyright in works created by one or more government employees working in collaboration with non-government individuals?

A: Works created by two or more authors with the intention that their individual contributions will be merged into a single product are called “joint works.” The authors of a joint work are co-owners of the copyright unless there is an agreement to the contrary. Each co-owner has an independent right to copy, distribute and use the work without the permission of the other co-

owner(s). Consequently, the U.S. Government co-owns a joint work when a government employee and one or more non-government persons together have produced the work. This means the government may reproduce and disseminate the work without the permission of other co-owners. (Co-owners do have, however, a duty to account for and share any profits generated by the sale or distribution of a joint work.) In the event a government employee co-authors a work with one or more individuals who are contractors or the employees of contractors, and the work created is a product of the contract, intellectual property rights are generally governed by the terms of the contract. In such cases, as previously described, the government customarily gets a non-exclusive license to use the work without limitation for its own purposes.

Q8: When our office purchases software or other educational materials, we sometimes find a “copyright licensing agreement” in the product package. On other occasions, a vendor has requested that someone in our office sign off on a “non-disclosure agreement” as a condition of delivering materials purchased under a DAU procurement contract. How should we handle these documents? Should we sign them?

A: DAU employees who deal with contractors should exercise caution when accepting copyrighted materials from a contractor or other vendor where the material is subject to a “licensing agreement,” “end user agreement,” “non-disclosure agreement,” or similar writing, even if the contractor gives assurances that they are “standard” or “customary.” Some agreements of this sort are harmless, but that is not always the case. These agreements sometimes contain provisions that purport to limit how DAU may use the materials provided, or that may seek to affect DAU’s legal rights and obligations with respect to copyrights or other matters. Bear in mind that government contracting officers commonly negotiate the terms of procurement contracts in their entirety, and an added-on “licensing agreement” or similar writing therefore may be superfluous to (or even conflict with) the terms of the procurement contract. DAU employees should therefore consult DAU’s General Counsel before signing any acknowledgment or other “acceptance” document that purports to signify DAU’s consent to the terms of a licensing agreement or similar document. This includes “self-executing” agreements, such as those that assert that by opening the package or using the product DAU automatically agrees to the vendor’s conditions.

Q9: I heard somewhere that anything posted on the Internet is automatically in the public domain. Does this mean I can use stuff I download from the Internet without worrying about copyrights?

A: Sorry, no. For the purposes of copyright law, the Internet is just another form of publishing or disseminating information. Simply because the Internet provides easy access to the information does not mean that materials found there are in the public domain and can be used without regard to copyright restrictions. Many copyrighted works have been posted to the Internet without authorization of the copyright holder, and there have been a number of celebrated cases in which persons who downloaded or forwarded music, movies, and other copyrighted materials found themselves in court for copyright infringement. DAU employees should exercise extreme caution in using downloaded digital material because there are both copyrighted works and public-domain works on the Internet, and it is not always obvious which

is which. Copyrighted works found on the Internet must be treated the same as copyrighted works found in other media.

Q10: Our office sometimes gets offers from contractors to use or try out different kinds of software applications. Is that software in the public domain because it is being offered for free?

A: No. Both “freeware” (software distributed for free) and “shareware” (software distributed without charge on a trial basis for a limited period, after which continued use requires payment of a fee), may be protected by copyrights that prohibit further reproduction, distribution, or use in the creation of a derivative product without permission from the copyright holder. Please bear in mind that only DAU’s IT administrators can install software on DAU-owned computers.

Q11: I thought it was okay to use copyrighted materials without permission as long as I give proper attribution to the author and include the little © sign. Isn’t this correct?

A: No. Acknowledging that material you’re using is copyrighted and properly crediting the author doesn’t relieve you of the responsibility to honor the copyright holder’s exclusive right to control the further reproduction, display, adaptation, etc. of his or her work. If the copyrighted material you intend to use is not covered by any of the permitted “free” uses (e.g., the “fair use doctrine”), you need to get the author’s permission.

Q12: Let’s say I get permission from the copyright holder to use a series of photographs in my PowerPoint slides. Do I have to give attribution and show the © sign in the slides?

A: You should credit the source, and display the copyright notice © and copyright ownership information if this is shown in the original source, for all copyrighted works you use including those prepared under fair use. “Crediting the source” means identifying the source of the work (author, title, publisher, and place and date of publication). “Copyright ownership information” is the © symbol, year of first publication and name of the copyright holder. In an educational multimedia presentation, the credit and copyright notice information may be shown in a separate section unless the multimedia material will be displayed or made available to students via a distance learning medium. For distance learning, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered “incorporated” if it is attached to the image file and appears on the screen when the image is viewed. You should also memorialize the basis on which copyrighted materials are being used.

Examples:

- *[Material used pursuant to permission of copyright holder.]* The material above is taken from Amanda B. Reckondwyth, “The Memoirs of Cap’n Doo-Dah,” published by Great Big Publisher, New York, 2005. © Great Big Media Conglomerate, 2005. Used by permission.
- *[Material developed by contractor pursuant to DAU contract and contract specifies contractor retains ownership of intellectual property.]* This presentation includes material that is protected by copyright and is used under license to the United States

Government. This license does not extend to non-federal entities. Further use, reproduction, or dissemination of copyrighted materials by non-federal entities is not authorized without permission of the copyright holder.

- *[Material used on Fair Use basis.]* These slides include copyrighted materials that are being used under the fair use exemption of U.S. Copyright Law and educational multimedia fair use guidelines. Further use of copyrighted materials is prohibited.

Q13: Do instructors or students have to give copyright information every time they quote a copyrighted source in scholarly articles, classroom research papers, and things of that sort?

A: No. There is no need for formal copyright acknowledgment where an author includes a short quotation in the text of a book, scholarly article, term paper, dissertation, or similar work, provided the author acknowledges the source of the material in the text or via a footnote, endnote, or similar citation. A student, for example, doesn't have to show the © symbol every time he or she quotes someone in a term paper or similar non-commercial writing, as long as the source is acknowledged by a footnote, endnote, or by some other appropriate means. Copyright acknowledgment is also necessary for copyrighted photos, drawings, charts or similar visual images. If the work is to be published, the publisher should obtain permission to use any visual images, and copyright information should be included in the published version.

Q14: I have prepared a great multimedia (e.g., PowerPoint) presentation for my DAU course. It includes "fair use" copyrighted material. Can I use the same multimedia presentation at a conference or symposium?

A: Generally yes, as long as your presentation is done on an official basis as part of your duties as a DAU employee. Educators may perform or display multimedia projects they created for classroom use, and that contain "fair use" copyrighted material, in presentations to their peers or other audiences where there is a clear educational purpose. The presentation should include the fair-use copyright notification at the beginning as described in answers to the previous two questions.

Q15: What about our distance learning systems? Can I post PowerPoint slides that contain copyrighted material on Blackboard for remote students?

A: Multi-media fair use guidelines permit educators to perform (in real time) and archive (for subsequent viewing) their own educational multimedia projects on Blackboard or a similar platform for use by remote students subject to certain conditions. These are:

- The copyrighted material must be included on a permissible basis, either because you have obtained permission from the copyright holder or the use falls within fair use standards;
- The posting must be for the purpose of providing educational material to remote students enrolled in a DAU course;
- There must be technological limitations on access to the network and educational multimedia project (such as a password or PIN) so that it is accessible only to students currently or formerly enrolled in the course; and

- The system must have a technological safeguard that prevents making unauthorized copies of copyrighted material.

Q16: Some DAU courses use materials (publications, simulations, software, etc.) purchased from commercial suppliers. Is there a “fair use” rule that allows us to integrate elements of those materials into other DAU activities?

A: Specialized, commercially-produced educational materials frequently come with some sort of notice regarding permitted uses and copyright restrictions. (For example, when you’re installing software on your computer at home, this is the screen that pops up with a bunch of fine print that requires you to scroll down and click “I Agree” before installation actually begins.) Before converting commercially-obtained materials to a different use, or extracting anything from them for use elsewhere, you should determine whether (or to what extent) those materials are protected by copyright, and whether they are subject to any license or user agreement. **“Fair use” guidelines do not preempt or supersede licenses and contractual obligations.** You should consult DAU’s General Counsel for advice before reproducing or using commercial materials in a manner that does not comply with any copyright restrictions or that is not within the scope of the original purchase agreement.

Q17: An article that I wrote as part of my official DAU duties has been accepted for publication by a private scholarly journal. The journal’s publisher sent me a form requiring that, as a condition of publication, I formally assign my copyright to the publisher. How should I handle this?

A: Materials prepared by federal employees as part of their official duties, including scholarly articles, cannot be copyrighted. You cannot assign what you do not have. You should inform the publisher that because your article was prepared as part of your official duties, it cannot be copyrighted by you or the publisher. If the publisher requires further reassurance on this point, you may tell them to contact DAU’s General Counsel. Additionally, bear in mind that government ethics regulations prohibit federal employees from receiving compensation for teaching, speaking or writing that relates to their official duties. Consequently, you cannot accept any form of compensation from the publisher. DAU employees who desire to do outside teaching, speaking, writing, or consulting are required to obtain prior written approval. Complete information about this, including the procedure for obtaining approval and a sample Request for Approval, are in DAU Directive 407, “Standards of Conduct,” December 6, 2007 (available on the DAU internal website).

Q18: What are the rules for posting copyrighted documents on DAU’s websites or distance learning platforms, such as Blackboard?

A: In general, you should not post a copyrighted document unless DAU has contracted to use the document in that way from the copyright holder or you otherwise have obtained permission from the copyright holder. Remember that one of the purposes of copyrights is to allow the copyright holder to realize the full commercial value of his or her creation, such as through sales of books or receipt of royalties from authorized users. When you make a copyrighted item available over the Internet, you are creating a path by which a person who wants to see or use

that item can do so without paying the copyright holder, and therefore possibly violating the holder's copyright. This is true both on public access websites as well as internally-restricted educational systems, such as DAU's Blackboard network. You may freely post documents that you are certain are in the public domain. **Key Point: DAU's Acker Library and Knowledge Repository maintains subscriptions to a variety of commercial information databases. DAU personnel and students can use these to obtain authorized access to books, journals, newspapers, and other copyrighted publications. These databases provide a simple, fully-authorized alternative means of making copyrighted materials available to DAU personnel and students without the need to reproduce or post the actual documents.** To access Acker Library's database resources, go to the DAUNet Home Page and click on DAU Business Units>Acker Library>Research Resources. Assistance and advice on using these resources are available by sending an e-mail to library@dau.mil or calling 703-805-2293.

Q19: What about posting links to copyrighted materials located elsewhere on the Web?

A: The use (and misuse) of copyrighted materials on the Internet is a rapidly evolving area of intellectual property law. In general, there is no problem with directing others to copyrighted materials that are available on the Internet via dissemination of a Web link. So-called "deep links"--where the link is to an internal page within another entity's website--present a special case. Some entities post a notice on their home page that deep links to their internal pages are not allowed. This is commonly because the home page contains copyright notices and restrictions, and the page owner does not want users to bypass this information by going directly to its internal web pages. In such cases, you should respect the entity's restrictions. You can do this by providing a link to the relevant homepage, with additional instructions on how to navigate to the deep link from there. (Example: "For further information, go to <http://www.blahblah.org> and then click on the link for 'Whatever.'")

Q20: I am developing a new distance learning course and will use some materials from our previous classroom curriculum. A few items appear to be copyrighted since they are tagged with the © symbol. How long will it take to identify the real copyright holder and obtain permission to use these materials? How much will it cost?

A: Hard to say. At a minimum, you should plan on a 30-day turnaround time. Past experience has shown that copyright responses can range from a few days to "never" in cases of uncooperative copyright holders. Preparing requests for copyright permission can sometimes be labor intensive, as it may be necessary to do some sleuthing just to confirm the identity of the true copyright holder. Costs vary greatly depending on the material, the intended use, and the whims of the copyright holder.

Q21: Can federal agencies be held liable for copyright infringement? What about individual government employees acting within the scope of their official duties?

A: A federal agency such as DAU may be liable for copyright infringement. The federal government may also be liable for infringement by a government contractor if the contractor acted with the authorization or consent of the government. DoD agencies process administrative claims of copyright infringement in accordance with DFARS Subpart 227.20. Otherwise, a

copyright owner's exclusive remedy for government infringement is to file suit in the U.S. Court of Federal Claims within three years of the act of alleged infringement. (28 USC § 1498(b).) With respect to individual government employees, there's good news and bad news. The good news: Under the copyright statute, the copyright holder may only sue the violating government agency for infringement, not any of the agency's individual employees. The bad news: While government employees cannot be sued individually for work-related copyright infringements, their employing agency may impose administrative disciplinary action on them, including suspension or removal from federal service, for violating copyright laws, regulations or policies. This means that while DAU employees cannot be sued for copyright infringement that occurs in the course of their official duties, DAU can fire, suspend, or take other appropriate disciplinary action against employees who commit copyright violations.