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## ASBURY THEOLOGICAL SEMINARY COPYRIGHT MANUAL

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## MANUAL FOR THE USE OF COPYRIGHTED MATERIALS

### I. Introduction and ATS Copyright Policy

Recent changes in the federal Copyright Act have made it clear that educators and educational institutions may be liable for copyright violations regardless of the educational purposes otherwise served by using the copyrighted materials. Recent case law also has placed a new burden on employers to make certain their employees are trained about the legal limits on the use of copyrighted material.

Therefore, it is important that all Asbury Theological Seminary ("ATS") faculty, staff and students follow the basic guidelines set forth in the ATS Copyright Policy and Compliance Manual. This Compliance Manual ("Manual") provides ATS faculty, staff and students with guidelines and tools to deal with copyright issues in the educational environment. Individuals should become familiar with the Manual and refer to specific sections that pertain to particular issues as they arise on campus.

#### **ATS Copyright Policy**

ATS recognizes its obligation to comply with U.S. copyright laws. The following guidelines, and the accompanying Manual, provide rules and guidance for ATS faculty, staff, and students when using materials protected by copyright laws.

1. Unlawful copies of copyrighted materials should not be produced or used with ATS-owned equipment, within ATS owned facilities, or at ATS-sponsored functions.
2. ATS employees shall not direct other employees to willfully violate copyright laws.
3. ATS shall make efforts to post copyright warnings for print, and electronic resources as required by law.
4. ATS employees are expected to be familiar with the Copyright Compliance Manual and to provide their supervisor, upon request, the justifications for "fair use" of copyrighted materials copied or used under their supervision without license or ownership.

### II. Fair Use

Generally, a copyright owner may control all uses of his or her copyrighted work, including reproduction, distribution, performance, display and adaptation. The Copyright Act provides some specific rules when copyrighted works may be used without the permission of copyright owners (e.g., exemptions and TEACH Act discussed in subsequent sections). However, "fair use" may allow broader use of copyrighted materials in certain situations.

There is no simple test to determine what is fair use. Instead, the Copyright Act provides very cursory guidelines for individuals to make their own determination of whether a specific use is fair use. Specifically, Section 107 of the Act sets forth the following four fair use factors that should be considered in each instance to determine whether a use is a fair use:

- (1) the *purpose and character* of use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the *nature of the copyrighted work*;
- (3) the *amount and substantiality* of the portion used in relation to the copyrighted work as a whole; and
- (4) the *effect of the use upon the potential market* for or value of the copyrighted work.

These factors must be evaluated as a whole to determine if the use of a copyrighted work is fair use. In evaluating fair use, the following considerations are applied: (1) Nonprofit educational purposes are favored in the first factor analysis. (2) The second factor looks at the nature of the copyrighted work. The courts usually favor uses of nonfiction over fiction and published works over unpublished ones. Highly creative works, such as music, creative writing and films are given highest protection. (3) Amount and substantiality are difficult to gauge. There is no specific number of words, lines, or notes that may be safely taken without permission. Generally, the courts favor excerpts over entire works, however, a small portion could capture the heart or essence of a work and be considered infringement. (4) Finally, the effect copying has on the market for a copyrighted work is often considered the most important factor in determining fair use.

**[See Section IV. D., Fair Use Checklist, for a useful tool in making decisions about fair use.]**

### III. Guidelines/Permissible Educational Uses

Responding to a need for clarification of the fair use doctrine, Congress, developed the Congressional Guidelines for the permissible educational uses of copyrighted material ("Guidelines"). These Congressional Guidelines are not law, but were written to indicate legislative intent and are used as benchmarks against which copyright infringement is gauged. This Manual sets forth the Congressional Guidelines, the TEACH Act for distance learning, and the exemptions for library and performance displays.

While only the courts can authoritatively determine whether a particular use is fair use, these guidelines represent the conditions under which fair use should generally apply and examples of when permission is required. Uses that exceed these guidelines may or may not be fair use, but the more one exceeds these guidelines, the greater the risk that fair use does not apply.

The limitations and conditions set forth in these guidelines do not apply to works in the public domain—such as U.S. Government works or works on which copyright has expired or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the use of some works, and users should refer to the applicable license terms for guidance.

#### A. Printed Materials

These guidelines should be followed with respect to copying printed materials in an educational setting.

##### 1. Permissible Uses

###### Single Copying for Instructors

A single copy may be made of any of the following by or for an instructor at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

1. A chapter from a book;
2. An article from a periodical or newspaper;
3. A short story, short essay, or short poem, whether or not from a collective work;

4. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

###### Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the instructor of the course for classroom use or discussion, provided that:

1. the copying meets the tests of brevity and spontaneity as defined below; and
2. the copying meets the cumulative effect test as defined below; and
3. each copy includes a notice of copyright.

*Brevity (The following satisfy the test of brevity.)*

- a. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages, or (b) from a longer poem, an excerpt of not more than 250 words.
- b. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- c. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- d. "Special Works": Certain works in poetry, prose, or "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience and fall short of 2,500 words in their entirety. Paragraph "b" above notwithstanding, such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 percent of the words found in the text thereof may be reproduced.

*Spontaneity (The following satisfy the test of spontaneity.)*

- a. The copying is at the instance and inspiration of the individual instructor; and
- b. The inspiration and decision to use the work

and moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

*Cumulative Effect (The following satisfy the test of cumulative effect.)*

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

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

## 2. Prohibitions

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

1. Copying shall not be used to create or to replace or to substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts there-from are accumulated or are reproduced and used separately.
2. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.
3. Copying shall not:
  - a. substitute for the purchase of books, publishers' reprints, or periodicals;
  - b. be directed by higher authority; or
  - c. be repeated with respect to the same item by the same instructor from term to term.
4. No charge shall be made to the student beyond the actual cost of the photo-copying.

## B. Print Music

These guidelines should be followed with respect to copying print music in an educational setting.

### 1. Permissible Uses:

- a. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.
- b. For academic purposes other than performances, multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.
- c. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered, or lyrics added if none exist.
- d. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual instructor.
- e. A single copy of a sound recording (such as a tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual instructor for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual instructor. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

### 2. Prohibitions:

- a. Copying to create or to replace or to substitute for anthologies, compilations, or collective works.
- b. Copying of or from works intended to be "consumable" in the course of study or teaching such as workbooks, exercises, standard tests and answer sheets and like material.

- c. Copying for the purpose of performance, except as in B.1.a. above.
- d. Copying for the purpose of substituting for the purchase of music except as in B. above.
- e. Copying without inclusion of the copyright notice which appears on the printed copy.

### **C. Off-air and Cable Television Recordings**

Standards for using television broadcast programs for educational purposes are covered by the off-air guidelines below. Additional uses of video are covered in other sections of the Manual (Performances and Displays, Multimedia and Distance Learning). While the off-air standards were developed before cable television was in general use, most authorities agree that the guidelines do apply for cable television broadcasts.

#### Off-air and Cable Guidelines

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retained by a nonprofit educational institution for a period not to exceed forty-five (45) calendar days after the date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
2. Off-air recordings may be used once by individual instructors in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction during the first ten (10) calendar days in the forty-five (45) calendar day retention period.
3. Off-air recordings may be made only at the request of individual instructors for their own use and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same instructor, regardless of the number of times the program may be broadcast.

4. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of instructors under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
5. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for instructor evaluation purposes, *i.e.*, to determine whether or not to include the broadcast program in the teaching curriculum. They may not be used by the recording institution for student exhibition or other evaluation purposes without authorization. "School days" are school session days - not counting weekends, holidays, vacations, examination periods or other scheduled interruptions - within the forty-five (45) calendar day retention period.
6. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
7. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
8. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

### **D. Library Copying**

If a librarian makes copies of copyrighted works for patrons to use in personal research, he/she must observe the following rules (primarily set forth in Section 108 of the Copyright Act):

To make a single copy, the following conditions must be satisfied:

1. The copy must be made without commercial advantage.
2. The library must be open to the public.
3. The copy must include the notice of copyright that appears on the work or, if no such notice can be found, a legend stating that the work may be protected by copyright.

4. The copy must be made at a user's request.
5. The copy must be made from the collection of the library or archives where the user makes his or her request or from the collection of another library or archives.
6. The copy must be no more than one article or other contribution to a copyrighted collection or periodical, or a small part of any other copyrighted work.
7. If an entire work, or substantial part of it, is requested, the library must first determine that a copy cannot be obtained at a fair price.
8. The copy must become the property of the user, and the library must have no notice that the copy would be used for any purpose other than private study, scholarship, or research.
9. A copyright warning must be prominently displayed at the place orders are accepted and on order forms (see Section IV. A.).

To make a digital copy, the following additional conditions must be satisfied:

1. If the work is protected by a license agreement, the terms of the agreement must be followed.
2. In addition to including the notice of copyright on the copy, add "No further reproduction and distribution of this copy is permitted by transmission or any other means."
3. The copy (e.g., diskette, file attached to e-mail, etc.) becomes the property of the user and all other digital copies must be destroyed.

To make three archival copies of an unpublished work under Section 108(b), the following conditions must be satisfied:

1. The copies must be made solely for purposes of preservation and security or for deposit for research use in another library.
2. The work must be in the collections of the library.
3. Copies reproduced in digital format must not be otherwise distributed or made available to the public (e.g., via a public web site) in that format outside the premises of the library.

To make three replacement copies of a published work under Section 108(c), the following conditions must be satisfied:

1. The copies must be made solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete.
2. An unused replacement cannot be obtained at a fair price.
3. Copies reproduced in digital format must not be made available to the public in that format outside the premises of the library.

To reproduce, distribute, display, or perform a published work during the last 20 years of its copyright term under Section 108(h), the following conditions must be satisfied:

1. The use must be for purposes of preservation, scholarship, or research.
2. The user must be a library or archives.
3. The work must no longer be subject to normal commercial exploitation.
4. A copy of the work cannot be obtained at a reasonable price.

Guidelines on photocopying and interlibrary arrangements

These guidelines, often referred to as the rule of fives, allow, within any calendar year, a library to receive no more than five photocopies of articles from a periodical title (not issue) less than five years old.

Section 108 does none of the following:

1. Impose liability for copyright infringement upon a library or its employees for the unsupervised use of reproducing equipment, provided that the equipment displays a notice that the making of a copy may be subject to the copyright law.
2. Excuse a person who uses library reproducing equipment or requests a copy from the library from liability for copyright infringement if it exceeds fair use as provided by Section 107.
3. Limit the lending of a limited number of copies and excerpts of an audiovisual news program.
4. In any way affect the right of fair use as provided by Section 107 or any contractual

obligations assumed by the library when it obtained a copy of a work in its collections.

Copying rights throughout Section 108:

1. Extend to the isolated and unrelated reproduction or distribution of a single copy of the same material on separate occasions.
2. Do not extend to cases where the library is aware (or has substantial reason to believe) that it is engaging in the related or concerted reproduction or distribution of multiple copies of the same material.
3. Do not extend to the systematic reproduction or distribution of single or multiple copies - this does not, however, prevent a library from participating in interlibrary arrangements as long as the quantity of copies received does not substitute for a subscription or purchase of a work.
4. Do not apply to a musical work, a pictorial, graphic, or sculptural work or a motion picture or other audiovisual work other than an audiovisual work dealing with news.

**E. Multimedia**

In creating multimedia works, the user is likely to deal with copyrights on all aspects of the production that are not original, including video, graphics, music, and or other sound recordings and computer software. There are no provisions of the Copyright Act specific to this issue, but direction can be found in the 1996 Fair Use Guidelines for Educational Multimedia, endorsed by the U.S. Copyright Office. The following is a summary of these guidelines:

Permitted Uses:

1. Students may perform and display their own educational multimedia projects for the course for which they were created and may use them in their own portfolios as examples of academic work.
2. Educators may perform and display their own education multimedia projects for face-to-face instruction, assigning to students for directed self-study, peer conferences, and professional portfolios.

Limitations:

1. Educators may use their projects for teaching courses for two years. Use beyond that time

period requires obtaining permission for each copyrighted portion.

2. Portions are generally specified "in the aggregate," meaning the total amount that can be used from a single copyrighted work.
3. Motion Media (film, video, television): Up to 10% or 3 minutes, whichever is less, from a single copyrighted work.
4. Text (prose, poetry, drama): Up to 10% or 1000 words, whichever is less, from a single copyrighted work.
5. Special limitations are placed on poems.
6. Music, Lyrics, and Music Video: Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work.
7. Illustrations and Photographs: No more than 5 images by an artist or photographer. From a published collective work, no more than 10% or 15 images.
8. Data Sets: Up to 10% or 2500 fields or cell entries from a database or table.
9. Copying and Distribution: There may be no more than two copies, only one of which can be placed on reserve. An additional copy may be made for preservation (backup) purposes.

When Permission is Required:

Educators and students must seek individual permissions for all copyrighted works incorporated in their educational multimedia projects for non-educational or commercial purposes, for duplication beyond guideline limitations, and for distribution over an electronic network other than certain remote instruction uses.

Important Reminders:

1. Exercise caution in using digital material downloaded from the Internet. Some copyrighted works cannot be reused without permission or royalty payment. Also, many web sites contain material posted without authorization from the copyright holder. See Section III. F. below, regarding the TEACH Act.
2. Credit the sources and display the copyright notice and copyright ownership information.

3. Alterations of copyrighted works must support specific instructional objectives. Make note that alterations have been made.

## F. Distance Learning and the TEACH Act

Under the "Technology, Education and Copyright Harmonization Act," (the "TEACH Act") codified at Section 110(2) of the Copyright Act, instructors may now digitally distribute a variety of copyrighted materials to those students enrolled in a distance learning course. Subject to a number of conditions placed on accredited educational institutions, which have copyright use policies in place, and their instructors, the TEACH Act permits an instructor to transmit digital copies of copyrighted materials provided that such materials are an "integral part of the class experience" and are comparable to the type of performance or display that typically would take place in a classroom setting. Without retracting the exemptions afforded educational institutions under Section 110(4) of the Copyright Act (see Section III. H. below), the TEACH Act imposes certain duties upon educational institutions to apprise faculty and students of the limitations imposed on digitally transmitted copyrighted materials utilized in distance learning courses, and to facilitate the implementation of technological restrictions with respect to transmission and retention of such materials. The guidelines that follow are consistent with the TEACH Act as they relate to instructors, staff, and students at ATS.

### *Instructor and Staff Guidelines*

ATS instructors involved in distance education should follow the guidelines described below with respect to the transmission of copyrighted materials in distance learning courses.

1. Only reasonable and limited portions of any copyrighted material may be transmitted. Under the TEACH Act, the provision of copyrighted materials in distance learning courses is intended to emulate conventional instruction and lecture formats. Accordingly, instructors may use almost any copyrighted work in a distance learning course provided that the materials are (i) included in reasonable and limited portions and (ii) displayed in an amount comparable to that which is typically displayed in the course of a live classroom session. Students must have

limited access to each session (*i.e.*, within a prescribed time period) and not be able to store the materials or review them later in the academic term. In selecting materials for use in a distance learning course, an instructor should consider the following:

- materials should be limited to an amount and duration comparable to what would be displayed or performed in a live classroom setting (*i.e.*, no transmission of unreasonably substantial portions of textbooks or course packs);
  - the selected materials should be used as part of a class assignment and not for entertainment purposes or optional reading; and
  - the selected copyrighted materials should pertain to the subject matter of the distance learning course.
  - in utilizing such materials, instructors should provide a notice to enrolled students that the materials used in the distance learning course may be subject to copyright protection.
2. Supervision over transmission. Materials transmitted to enrolled students must be made by, at the direction of, or under the actual supervision of an instructor. The TEACH Act requires instructors to generally supervise course activities but does not require real-time supervision or pre-approval of a transmission by the instructor for the performance or display of the copyrighted materials. An instructor's following the guidelines described in this section should result in the instructor's adequate supervision over course activities with respect to the related copyrighted materials for a distance learning course.
  3. Restricted conversion of analog to digital formats. Digitization of copyrighted materials is not allowed unless (i) the amount converted is limited to the amount lawfully displayed under Section 110(2) of the Copyright Act (see Section III. H. below), or (ii) a digital version is unavailable or (iii) the available digital version is shielded behind protection measures that prevent it from being displayed under Section 110(2) of the Copyright Act (see Section III. H. below).

4. Transmission of commercially available digital educational materials prohibited. Instructors may not use copyrighted materials that are marketed primarily for instructional use in distance education courses. Instructors are advised to either gain the permission of the copyright owner, encourage students to acquire it through the preexisting commercial channels, or refrain from using these commercial materials in their distance learning courses.
5. Alternatives. If the TEACH Act prohibits the use of copyrighted materials, instructors may pursue two alternative routes to incorporate the materials in their distance learning course. First an instructor, may apply the provisions of fair use as outlined in the Introduction above. If fair use does not apply, an instructor may secure permission from the copyright owner (see Copyright Permission Form in Section IV. C. below).

#### *Access and Control*

Under the TEACH Act, each educational institution is required to establish controls to ensure limited access to the copyrighted materials transmitted specifically for use in a distance learning course. Accordingly, the information and technology staff of ATS should consider the following in establishing an environment consistent with the requirements of the TEACH Act.

1. Access Code. To the extent technologically feasible, ATS staff should establish systems to ensure that only students enrolled in a given distance learning course actually receive the transmitted copyrighted materials. This may be accomplished, and maintained, pursuant to an access code system enabling students to access the information through the use of an assigned password for the respective course.
2. Implement controls to prevent storage and dissemination of copyrighted materials. Staff must work to prevent the retention of the copyrighted materials in accessible form by recipients of the transmissions for longer than the class session. Staff should work with instructors to determine and to minimize the amount of time and number of times students may access the copyrighted materials. Additionally, staff must employ technological

measures to prevent students from further disseminating of the work in accessible form. This may include introducing technological controls to prevent enrolled students from downloading or retaining the information on their own computers thereby minimizing the risk that students may further disseminate the copyrighted materials to others. The internal controls that the staff may implement to limit accessibility of the transmitted materials with respect to a distance learning course must not interfere with the copyright owner's own digital access control or management, if any.

3. Retention of temporary electronic copies. ATS may retain temporary copies of the copyrighted materials to effect the transmission; however, ATS may not store the material for access by the enrolled students on the system or network for a longer period than is reasonably necessary to facilitate the transmissions for which it was made. Further, staff must ensure that such materials are stored on a system or network accessible only to the instructors, enrolled students, or any other anticipated recipients.
4. Archiving electronic copies of the materials. The TEACH Act, under a new Section 112(f) of the Copyright Act, permits ATS to retain copies of its digital transmissions, including those used in connection with distance learning courses. However, no further copies may be made from those materials other than the copies and transmissions authorized under Section 110(2) of the Copyright Act (see Section H of this Manual). Instructors may retrieve the electronic copies of copyrighted materials which have been secured outside the electronic reach of students for use in future distance learning courses.

#### *Student Guidelines*

1. Students should be mindful of the fact that class material obtained in a distance learning course may contain copyrighted works. Under the TEACH Act, students are prohibited from any retention or redistribution of this information.
2. Access to distance learning course materials should be restricted by an access code. Students who are registered to take the distance learning course should be given

access to the protected materials via the access code. Students should take every precaution to protect the access code to prevent unauthorized access to course materials.

### *Synopsis of TEACH Rules*

Instructors should consider the following when incorporating copyrighted materials in their distance learning courses so as to avoid copyright infringement.

1. The copyrighted material transmitted for the distance learning course should be:
  - a. a performance of a non-dramatic literary work; or
  - b. a performance of a non-dramatic musical work; or
  - c. a performance of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions;" or
  - d. a display in the amount comparable to that which is typically displayed in the course of a live classroom session.
2. The copyrighted material transmitted for the distance learning course should not be:
  - a. sold or licensed in other formats primarily for digital distance education; and
  - b. a text book, course pack, or other copyrighted material typically purchased or acquired by students for their instructional use as part of a class; and
  - c. an unlawful copy of copyrighted materials (that is, neither the instructor nor ATS has reason to believe that the material transmitted is an unlawful copy).
3. The performance or display of the copyrighted materials should be:
  - a. an integral part of a class session offered as a regular part of the systematic, mediated, instructional activities of ATS; and
  - b. made by, at the direction of, or under the actual supervision of an instructor; and

- c. directly related and of material assistance to the teaching content of the distance learning course.
4. If the instructor is considering using materials that must be converted from print or other analog format to digital format, ensure that:
  - a. the amount of work converted is no greater than the amount that lawfully may be used for the course; and
  - b. there is no digital version of the work available to ATS or the available digital version utilizes technological protections preventing its availability for use in a distance learning course.
5. ATS instructors and staff should utilize any available technological tools to:
  - a. limit access to the copyrighted materials used in the distance learning course to enrolled students of such course; and
  - b. prevent downstream copying by the enrolled students; and
  - c. prevent the students from retaining the materials for longer than a class session.
6. Instructors or staff should provide a notice to the enrolled students that the materials used in the distance learning course may be subject to copyright protection and that they may not violate the legal rights of a copyright owner.

***[See Section IV. E., TEACH Act Checklist, for a useful tool in making determining what is acceptable under the TEACH Act.]***

## **G. Computer Software**

### Copying Software

Section 117 of the Copyright Act permits the owner of a computer program:

1. To make another copy or adaptation of the program for archival (backup) purposes, but not to make multiple copies or replacement copies from an archival copy.
2. To adapt a copyrighted program from one language to another in which it is not commercially available.

3. To add features to a copyrighted program for use at school, in order to make better use of the program.

It is important to review the terms and conditions of license agreements, especially clauses relating to permitted uses, prohibited uses, restrictions, and copying limitations, because limitations on exclusive rights can be overridden by contract. By installing or using a licensed software product, an educational institution will be legally bound by the agreement.

Educational institutions will sometimes purchase a single-user copy of a program and install it on multiple machines. This is more than likely infringing activity. There is currently no fair use or exemption that would allow for making multiple copies of a computer program within a college. Thus, administrators should always consult the terms of a license to determine the authorized uses of software.

#### Lending Software

The Copyright Software Rental Amendments Act of 1990 grants copyright owners of computer software the right to control rental, lease or lending of their software (Section 109(b) of the Copyright Act). However, the law does provide an exemption for nonprofit libraries provided that a warning of copyright is affixed to the software, reading: This exemption does not apply to software lending by technology or academic departments or administrators.

### **H. Performance and Display Exemptions**

The owner of a musical work or a motion picture has the right to control the public performance or display of the respective work. The music performing rights societies (ASCAP, IBM and SESAC) provide licenses to allow music performances (live and recorded) in public places. Swank Films similarly licenses universities to show commercial films. Section 110 of the Copyright Act sets forth several specific exemptions to the performance and display right:

#### Face-to-Face Teaching Activities

##### Section 110(1)

1. Section 110(1) permits the performance or display of any copyrighted work in face-to-face teaching activities without having to obtain a public performance license if certain conditions are met.

2. This section requires that the performance or display of a copyrighted work take place in a classroom or similar place of instruction (such as a school library).
3. The performance or display must be directly related to the curriculum and not connected with recreation or a reward (e.g., treating a class to a movie, unrelated to course content, would require obtaining permission).

#### Transmission of Instructional Activities

##### Section 110(2)

1. Section 110(2) permits the transmission of a performance of a non-dramatic literary or musical work or display of a work without having to obtain a public performance license if certain conditions are met.
2. Permissible copyrighted works include singing a song, reciting a poem, reading a short story out loud or displaying paintings.
3. Plays, movies and most audiovisual works are not "non-dramatic" and are not covered by this section.
4. The performance must be a "regular part of systematic instructional activities" and "directly related and of material assistance to the teaching content."
5. The transmission must be made for reception in a classroom or similar place of instruction.

#### Exemption for Certain Nonprofit Performances

##### Section 110(4)

1. Section 110(4) permits a live performance (not televised) of a non-dramatic literary or musical work—by live performance, the playing of phonorecords or by a receiving apparatus—without having to obtain a public performance license if certain conditions are met.
2. The performance must be without any purpose of direct or indirect commercial advantage (e.g., a performance by a school orchestra conducted by a music instructor who is paid an annual salary is exempt, but the same performance conducted by a hired band leader is not. Furthermore, while admission charges usually indicate commercial purpose, the exemption applies if the proceeds are used exclusively for an educational, religious or charitable purpose; but, in such a case, the copyright owner has

veto power under Section 110(4)(B)).

3. The performance must be non-dramatic (e.g., a concert, choral work or poetry reading). Performing dramatic works, such as plays and musicals, is only allowed in face-to-face teaching activities.

## IV. TOOLS

### IV. A. Copyright Warning for Use by Libraries and Archives

*The following warning is required (1) to be displayed at the place where orders for copies or recordings are accepted by the ATS library and (2) to be included on printed forms supplied by the library and used by its patrons for ordering copies or recordings.*

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#### Copyright Regulations

##### (a) *Definitions.*

(1) A "Display Warning of Copyright" is to be displayed at the place where orders for copies or sound recordings are accepted by libraries and archives.

(2) An "Order Warning of Copyright" is to be included on printed forms supplied by libraries and archives and used by their patrons for ordering copies or phonorecords.

##### (b) *Contents.*

A Display Warning of Copyright and an Order Warning of Copyright shall consist of a verbatim reproduction of the following notice, printed in such size and form and displayed in such manner as to comply with copyright law:

**The copyright law of the United States (title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.**

##### (c) *Form and Manner of Use.*

(1) A Display Warning of Copyright shall be printed on heavy paper or other durable material in type at least 18 points in size, and shall be displayed prominently, in such manner and location as to be clearly visible, legible, and comprehensible to a casual observer within the immediate vicinity of the place where orders are accepted.

(2) An Order Warning of Copyright shall be printed within a box located prominently on the order form itself, either on the front side of the form or immediately adjacent to the space calling for the name or signature of the person using the form. The notice shall be printed in type size no smaller than that used predominantly throughout the form, and in no case shall the size be smaller than 8 points. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual reader of the form.

#### IV. B. Copyright and Publicity Consent

*The following request form may be used to obtain consent from a presenter on campus, whose presentation is being recorded and disseminated throughout ATS in some way. This consent form provides license for the use of the presenter's copyrighted materials and name and likeness.*

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Dear \_\_\_\_\_:

Under state and federal laws, you have rights of publicity that provide you with certain control over the use of your name and likeness. In addition, you may hold copyrights in specific images, text or other materials you make available to Asbury Theological Seminary ("ATS") ("Copyrighted Materials"). ATS appreciates your allowing us to use your name, image, likeness or other materials you make available to us for our educational purposes. ATS respects your rights and is open to discussing any concerns that you might have related to this issue.

By signing this agreement, and for valuable consideration, the receipt and sufficiency of which you hereby acknowledge, you grant to ATS a worldwide, nonexclusive, perpetual, royalty-free license to use your name, image and likeness and any Copyrighted Materials you provide, whether (i) in full or in part, (ii) changed, altered or transformed or (iii) reproduced in print, digital or electronic media, or in any other format now known or hereafter to be discovered. You agree to irrevocably and unconditionally release ATS, its directors, employees and affiliates from any claims related to such use, including but not limited to, claims under right of publicity, right of privacy, copyright, and trademark laws.

All copyrights in photographs, video, publications, or other works created by ATS or our agents incorporating your name, image, likeness, or Copyrighted Materials shall be solely owned and/or controlled by ATS and/or our agents, without affecting your underlying proprietary rights in such materials. You acknowledge that this agreement is voluntary and that you expect no further remuneration whatsoever in exchange for the rights granted hereunder.

Thank you for taking the time to read and sign this agreement. Please let us know if you have any questions.

Sincerely,

\_\_\_\_\_

Accepted and Confirmed:

Asbury Theological Seminary

By: \_\_\_\_\_

Presenter's Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

**IV. C. Request for Permission**

*The following request form may be used to request permission for use of copyrighted materials when fair use, the TEACH Act, or statutory exemptions do not allow use of the materials without a license.*

-----  
Request for Permission

Date: \_\_\_\_\_

To Whom It May Concern:

We are writing to request permission to reproduce/use the below-identified work for the following purpose:

\_\_\_\_\_

Title: \_\_\_\_\_

Copyright Information: \_\_\_\_\_

Author(s): \_\_\_\_\_

Number of Copies: \_\_\_\_\_

Method of Distribution, Display, etc.: \_\_\_\_\_

A self-addressed-stamped-envelope is enclosed for you to return your response. Please reply to let us know if you require any fees to be paid for this proposed use in an educational setting.

Sincerely,

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

-----  
**Copyright Owner Information:**

Permission Granted by: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Fee or other Condition of Use: \_\_\_\_\_

#### IV. D. Fair Use Checklist

*This checklist may be used in connection with the determination of fair use as explained in the Introduction to this Manual. This is a tool to help in the subjective decision-making in this area, and there is no foolproof method to decide if a use is a fair use. In general, if the weight of factors strongly favors fair use, then fair use likely applies (and vice versa).*

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#### PURPOSE

*Favoring Fair Use:*

- Teaching
- Research
- Scholarship
- Criticism/Commentary/Parody
- Transformative

*Opposing Fair Use:*

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

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#### NATURE

*Favoring Fair Use:*

- Published Work
- Factual or nonfiction

*Opposing Fair Use:*

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

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#### AMOUNT

*Favoring Fair Use:*

- Small quantity
- Portion used is not significant to entire work
- Amount is appropriate for educational purpose

*Opposing Fair Use:*

- Large quantity or whole work
- Portion used is central to work or "heart of the work"

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#### EFFECT

*Favoring Fair Use:*

- Uses lawfully acquired copy of original work
- One or few copies made
- No significant effect on the market or potential market
- Lack of licensing mechanism
- No similar product marketed by the copyright holder

*Opposing Fair Use:*

- Could replace sale of copyrighted work
  - Numerous copies made
  - Significantly impairs market or potential market
  - Reasonably available licensing mechanism
  - Affordable permission available for using work
  - Repeated or long term use
  - Accessible on web or in other public forum
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