

## **WILLIAM RAINEY HARPER COLLEGE POLICY FOR THE FAIR USE OF COPYRIGHTED WORKS**

### Harper College Commitment to Copyright Compliance

While encouraging and supporting its employees to utilize the most modern methods and techniques to support instructional delivery, it remains Harper College's policy to adhere to the provisions of the United States Copyright Law of 1976, as amended (hereinafter, COPYRIGHT ACT)<sup>1</sup>. All employees involved in the reproduction of copyrighted materials for instructional purposes are expected to adhere to the provisions of the COPYRIGHT ACT and this Policy. This Policy represents a commitment to comply with the law, while fully exercising the rights accorded to users under current exemptions to the law.

Copyright protects "original works of authorship fixed in any tangible medium of expression."<sup>2</sup> Copyright generally extends automatic protection to any original expression of creative work that is recorded in any tangible form,<sup>3</sup> published or unpublished. "A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration."<sup>4</sup> This includes all such works preserved on a computer hard drive or on floppy disks, computer tapes, or other electronic formats.

Because a copyright notice is not required for copyright protection, most works - including fiction and nonfiction writings, musical scores and their recorded performances, scripts and their recorded performances of dramatic works, and works of art - should be presumed to be protected by copyright. The notable exception to this rule is the category of works published by the United States Government, which are in the public domain from the time of first publication according to law.

Copyrighted materials are subject to restrictions on duplicating and distribution. Copyrighted materials may be copied or otherwise used without the owner's permission only when such constitutes a "fair use" as defined in the COPYRIGHT ACT<sup>5</sup>. A "fair use" can be determined by examining four factors: "(1) the purpose and character of the 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."<sup>6</sup> Fair use is contextual and must be determined according to the

---

<sup>1</sup> Title 17 of the United States Code.

<sup>2</sup> 17 USC 102(a).

<sup>3</sup> 17 USC 101.

<sup>4</sup> Ibid.

<sup>5</sup> 17 USC 107.

<sup>6</sup> Ibid.

circumstances of each individual's situation. The four factors outlined above should be evaluated each time an employee seeks to copy materials for instructional delivery. If not determined to be fair use, the employee is prohibited from copying works unless he or she obtains a license agreement or permission from the copyright owner in order to use the copyrighted work.

To promote compliance with the COPYRIGHT ACT, Harper College will:

1. inform and educate its employees regarding the COPYRIGHT ACT and its exemptions;
2. develop and distribute resources concerning the "Fair Use" exemption to the COPYRIGHT ACT (Title 17, Sec, 107);
3. designate a compliance officer to receive notices and handle questions or complaint from copyright owners alleging infringement(s);
4. refrain, whenever possible, from adopting or supporting policies or agreements that would restrict Fair Use rights; and
5. defend and indemnify employees in the event of an infringement allegation when the employee acts in the best interest of the College and within the scope of his or her College duties.

An underlying philosophy of this Policy is that Harper employees will learn about fair use to help reach responsible decisions. The Resources for Learning Division will disseminate information and guidelines about fair use on the Harper College Library Web site, through occasional workshops, and individually as appropriate.

The primary responsibility for decisions about fair use belongs to the individual employee. The College calls on each employee of the College to be responsible for fair use determinations with respect to the projects within each employee's purview. Resources for Learning (RFL) Division contact persons are able to assist individuals in those determinations when necessary.

Harper employees who willfully violate the COPYRIGHT ACT are in violation of College Policy and assume all liability. Harper College may choose to seek further action through the College's discipline policy.

(Portions of policy adapted with permission of the Copyright Management Center, Indiana University, Purdue University, Indianapolis)

December 18, 2002

Harper College Board of Trustees:

First Reading: February 25, 2003

Second Reading and Adoption: March 25, 2003