Copyright Guidelines for the Methodist Theological School in Ohio

I. Introduction
The fundamental purpose for these guidelines is to provide an overview for faculty, staff, and students at the Methodist Theological School in Ohio (MTSO) about how to comply with U.S. copyright law. Understanding copyright law and using it in good faith enables all members of the campus community to exercise with confidence the rights we have as users of fixed medium, copyrighted works. The grounding in such knowledge enables academic and campus life to carry on with clarity of purpose and a uniform understanding. A reasonable foundation in copyright law empowers members of the campus community who are authors and creators to understand and manage their own copyrights.

Copyright exists as a part of federal law that provides that creators and distributors of creative works with inducements to share the result of their inspired exercises with others so that the creators are compensated for the use of their intellectual property. The extent of compensation depends on the amount of the original work, the nature of its content, and how large an audience will be able to gain access to it.

The U.S. Copyright Act, Title 17, U.S. Code, as amended serves as the primary source for these guidelines. The full text of the Act is available at the following URL: http://www.copyright.gov/title17/. The statute has its origins in The United States Constitution’ Article 1, Section 8, which states, “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to respective writings and discoveries.” Although we often refer to protected material as "intellectual property," the rights granted by copyright differ in several ways from other kinds of property rights. The intent behind these guidelines is that they are stated in laypersons’ terms. They should not be used as a substitute for legal advice.

This document supersedes the last version of an MTSO copyright policy that was composed in 2007.

An acknowledgement for the content found in ensuing pages originates from a variety of sources. First, Kevin Smith, J.D., Scholarly Communications Officer at Duke University gives an abundance of explanations and examples concerning the wide range of intellectual property formats. Secondly, Dr. Kenneth Crews, Director of the Copyright Advisory Office of Columbia University affords cogent and succinct insights. Finally, Blake Walter, Director of the Brimson Grow Library at Northern Seminary provides a thorough and concise copyright policy correctly attuned for seminaries and theological schools.

For more information about the Methodist Theological School in Ohio’s copyright policies, contact:
Paul Burnam, Director of the Library, 740-362-3435 or pburnam@mtso.edu and/or David Powell, Assistant Librarian, 740-362-3438 or dpowell@mtso.edu.
II. The Meaning of Copyright
U.S. copyright law addresses many nebulous and uncertain areas. Therefore, the goal of this policy is to provide MTSO administrators, faculty, librarians, students, staff, and others with a standard approach for addressing complex copyright issues. This policy covers classroom issues such as photocopying, online and distance education, and course packs. It also covers use for images, audio, video, and streaming media used in the classroom and Library.

III. What Is Protected by Copyright?
The rights granted by the Copyright Act are intended to benefit creators of original works, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any original work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as experts' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those creators are the rights to reproduce, distribute, publicly perform and publicly display their works.

Concerns about works created in other countries are legitimate. However, because of international treaties the U.S. has signed, works created or published in countries other than the United States are subject to U.S. copyright law when used in the United States.

These rights provide copyright holders control over the use of their creations and receive an income stream from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or magazine; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years. For more information on copyright duration, visit http://copyright.gov/circs/circ15a.pdf

Copyright protection does not extend to:
- facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries. Note however that a particular expression or arrangement of facts, ideas, etc., may be protected.
- works of the U.S. federal government or any U.S. federal government employee acting within the scope of his/her employment
- works in the public domain
- works for which copyright has expired (thus in the public domain)

Works “Made for Hire”
Works “made for hire” are created by an employee within the scope of his or her employment.
Administrative reports, committee minutes, the seminary catalog, this copyright guide, and software programs written for seminary activities are all examples of works “made for hire.” The seminary is deemed to hold the copyright to such works.

As an important exception to this principle, many educational institutions consider that the copyright to scholarly works created by faculty (such as books, articles, musical compositions, and art) in most cases will belong to the faculty member. Institutions and faculty members may enter into an agreement at any time to reassign some or all of these rights in particular cases.

MTSO retains a non-exclusive right to all course materials created by faculty for courses taught at MTSO. Materials such as (but not limited to) syllabi, reading lists, recorded lectures, exam materials, or material put on the school’s learning management system can be used, modified, or redistributed by the seminary.

The question of copyright needs to be considered carefully when using the services of independent contractors. Independent contractors are generally not considered employees for copyright purposes, and thus their work is not “made for hire.” For example, a film production company that is hired to make a promotional film will retain copyright of that film unless it assigns the copyright to the institution. Any rights that are to be assigned to the institution need to be clearly stated in writing before such projects begin.

When Works Pass into the Public Domain

<table>
<thead>
<tr>
<th>Time of Publication</th>
<th>Conditions</th>
<th>Public Domain Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1923 and 1978</td>
<td>Published without a copyright notice</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1978 and 1 March 1989</td>
<td>Published without a copyright notice, and without subsequent registration within 5 years</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1978 and 1 March 1989</td>
<td>Published without a copyright notice, but with subsequent registration within 5 years</td>
<td>70 years after death of author*</td>
</tr>
<tr>
<td>Between 1923 and 1963</td>
<td>Published with copyright notice, but copyright was not renewed</td>
<td>In public domain</td>
</tr>
<tr>
<td>Between 1923 and 1963</td>
<td>Published with copyright notice and copyright was renewed</td>
<td>95 years after publication date</td>
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<tr>
<td>Between 1964 and 1977</td>
<td>Published with copyright notice</td>
<td>95 years after publication date</td>
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<td>Period</td>
<td>Creation Status</td>
<td>Copyright Period</td>
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</tr>
<tr>
<td>Between 1978 and 1 March 1989</td>
<td>Published with copyright notice</td>
<td>70 years after death of author*</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Created before 1978 and first published with notice in the specified period</td>
<td>The greater of the term specified in the previous entry or 31 December 2047</td>
</tr>
<tr>
<td>From 1 March 1989 through 2002</td>
<td>Created after 1977</td>
<td>70 years after the death of author*</td>
</tr>
<tr>
<td>From 1 March 1989 through 2002</td>
<td>Created before 1978 and first published in this period</td>
<td>The greater of the term specified in the previous entry or 31 December 2047</td>
</tr>
<tr>
<td>After 2002</td>
<td>None</td>
<td>70 years after the death of author*</td>
</tr>
</tbody>
</table>

* If the work is of corporate authorship, copyright endures for the shorter of 95 years from publication, or 120 years from creation.

IV. Lawful Use

A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work (work of nonfiction or fiction; fair use is more applicable to nonfiction);
3. The amount and substantiality of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

To avoid confusion and minimize the risk of copyright infringement, MTSO interprets the following situations as fair use:

* Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
* Reproduction of material for classroom use where the reproduction is unexpected and spontaneous, for example, where an article in the morning's paper is directly relevant to that
day's class topic. This would generally cover one time use in only one semester.
* Use in a parody of short portions of the work itself.
* A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

On July 28, 2010 the Library of Congress issued an exemption to the Digital Millennium Copyright Act (DMCA) which allows the cracking of the content scrambling system (CSS) on DVDs. Now this exemption extends to all college and university instructors, students in film and media studies courses, and the permitted “educational uses” now include critical commentary and documentary production in addition to the exceptionally broad category of “non-commercial videos.” (Fitzpatrick, Kathleen. “Information on the New DMCA Exemptions.” Chronicle of Higher Education, July 27, 2010 (http://chronicle.com/blogs/profhacker/information-on-the-new-dmca-exemptions/25795)

If your use does not meet the above criteria and the work is protected by copyright, you probably need to obtain permission to use the work from the copyright holder or its agent.

V. Types of Use
Classroom Handouts
Based on MTSO's fair use analysis, classroom handouts fall into two categories; one that requires permission and one that does not. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; you must obtain copyright permission to use the work.

Course Packs
All articles, chapters and other individual works in any print or electronic course pack require copyright permission. Copyright permission for course packs is usually granted by the academic semester. To reuse a course pack in subsequent academic semesters, you probably need to obtain permission again. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.

When course packs are ordered, it is important to clarify who will obtain permission for the course pack—the campus bookstore, the faculty member, or a member of the administrative staff. Deferring responsibility for copyright permission will not provide you protection against a claim of copyright infringement.

Reserves
If the MTSO Library owns a copy of a publication, the Library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the Library must obtain copyright permission.
Learning Management Systems (LMS)
Faculty may add electronic versions of print documents to their course’s site in the campus-wide learning management system. Access to these electronic versions of documents should be restricted by a password given out only to members of the class. Adding links to full text electronic documents found in databases to which the Library subscribes or has access is permissible because the database vendor has purchased the rights for mass access from the original publisher of the document.

Photocopying In the Library
It is permissible to photocopy copyright-protected works in the MTSO Library without obtaining permission from the copyright owner, under the following circumstances:

* Library user needs for articles and short excerpts. A library user may execute a photocopy of a periodical article or an excerpt of any other work. The user should understand that the copy should not be used for purposes other than private study, scholarship, and research. Under the same circumstances, the MTSO Library may make copies of parts of text per request from another library for one of the requesting library’s users. As recommended by Section 108 of the Copyright Act, the Library must display the Copyright register's notice at the place library users make their reproduction requests to the library.

* Archival copies of unpublished works. Up to three copies of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the Library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the MTSO Library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.

* Replacement of lost, damaged or obsolete copies. The MTSO Library may make up to three copies, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)

* Library user requests for entire works. One copy of an entire book or periodical may be made by your library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the Library determining after reasonable investigation that an authorized copy cannot be obtained at a reasonable price. Once made, the copy must become the property of the library user. The library must have no reason to believe that the copy will be used by the user for purposes other than private study, scholarship and research, and the library must display the Copyright register's notice at the place library users make their reproduction requests to the Library.

*MTSO Library users (students, faculty, etc.) can make photocopies of texts provided the following criteria are met:
  - The library user makes one copy of an article from a periodical or a small part of any other work.
  - The copy becomes the property of the library user.
  - The Library has no reason to believe that the copy will be used for purposes other than private study, scholarship and research.
The Library displays the copyright notice at the place library users make their copies. Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

Interlibrary Loan
The MTSO Library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. The MTSO Library follows the Commission on New Technological Uses (CONTU) guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many under CONTU.

If the articles or items being copied have been obtained through a digital license, you must check the license to see under what terms and conditions, if any, interlibrary loan is permitted.

Hybrid Courses and Learning Management Systems
In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude higher education institutions, including MTSO, have for the performance and display of copyright-protected materials in a hybrid course environment, involving the use of the learning management system.

The copyright requirements for TEACH for learning management system postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to remotely-located students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission. If an electronic full text version of a journal article or book chapter is available through a database to which the Library subscribes, it can be included in a learning management system course site without requesting copyright permission (permission has already been obtained by the database vendor) by displaying the persistent URL (obtained from the full record display for the article or chapter) for the article or book chapter.

Copyright and Foreign Works
The U.S. is a member of the leading international copyright treaty, the Berne Convention. As such, when MTSO uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.).
How to Obtain Copyright Permission

1. Identify the copyright holder. Many works provide this information in a copyright notice on the item itself. The records of the U.S. Copyright Office may be searched at http://www.copyright.gov. Stanford University Library also makes available a database of copyright-renewal records at http://collections.stanford.edu/copyrightrenewals.

2. If the copyright holder can be identified, look for instructions on the holder’s Web site. If the copyright holder does not provide instructions or if the holder is an individual, send a written letter as shown in the “Sample Permission Request Letter” below:

Sample Permission Request Letter

If sending via postal mail, include a self-addressed, stamped envelope:

[date]

[copyright owner’s or agent’s name and address]

Dear [copyright owner or agent]:

I am writing to ask your permission to use [give full citation of the work] for the purpose of [describe the intended use in sufficient detail, especially whether the material will be posted online or will only be distributed in hard copy].

Please complete and return this form to me at your earliest convenience. Thank you very much for your consideration.

Sincerely yours,

[your name, position, and contact information]

I do _____ do not _____ grant permission for my work to be used for the purpose stated above.

Name ____________________________________________
Signature ____________________________
Date ________________________________

3. If the copyright holder or contact information cannot be identified, you may try making a request through one of the agencies listed below:
Music:

OneLicense.net:  https://www.onelicense.net/
CCLI:  http://us.ccli.com/
American Society of Composers, Authors and Publishers:  http://www.ascap.com/licensing
Broadcast Music, Inc.:  http://www.bmi.com/licensing
SESAC:  http://www.sesac.com/licensing/obtain_a_license.aspx

Films:

Motion Picture Licensing Corporation  http://www.mplc.org

Plays:

Samuel French (http://www.samuelfrench.com/)

4. Keep records of all correspondence. If you receive oral permission from the copyright holder, follow up with a written confirmation.
5. It is good form to publicly thank copyright holders for permissions received. This is often done in an acknowledgements section of the new work you create or publish.
6. Note that failure to receive permission (for example, when the copyright holder does not respond to your request) does not necessarily justify the use of a work.

Frequently Asked Questions

Reporting Suspected Infringements
If you suspect that anyone at MTSO, including a student, is using any copyright-protected material without the permission of the copyright holder, immediately report this to <Name>, Copyright Officer at <phone> or <email>.

Review and Interpretation of this Policy
This Policy will be reviewed no later than <date>, and updated if necessary.
For interpretation of this Policy, contact <Name>, Copyright Officer at <phone> or <email>.

The Copyright Guidelines for the Methodist Theological School in Ohio has been most recently updated on March 7, 2016.

Appendix 1: Managing Your Own Copyright

Contracts with publishers
When your book, article, image, or other work is accepted for publication, the publisher will give you a contract to sign. This contract usually transfers to the publisher all copyright of your work. The publisher is granted not only the exclusive right to publish your work, but also the exclusive
right to enter into contracts or give permission for future uses of your work (such as its inclusion in a product such as JSTOR, its re-publication, or use by individual people) and to charge permission fees for such uses. Once you transfer your copyright to a publisher, even you, the author, must seek the publisher’s permission for uses beyond what is permitted by Fair Use and the other exemptions specified in the law.

Although it may prove difficult, you are entitled to negotiate the contract. For example, you may want to assign to a publisher the right to publish your article in a scholarly journal, but reserve the right to make your article available on the Web in a publicly accessible archive after a certain length of time has passed.

Some publishers permit professors and students to freely copy works or parts of work for many academic uses. Other publishers have restrictive policies and require high permission fees. Consider the model you want to support. Copyright is one consideration among many to bear in mind when deciding which publishers to consider for your own publications.

This is not to say that publishers who charge permission fees are acting unfairly. Each publisher has a legitimate interest in how the works it publishes are made available and used, and at what price. The copyright law is concerned with balancing the interests of copyright holders and users of copyrighted works. The better you understand copyright law, the better equipped you are to encourage publishers to maintain this balance.

Registering your copyright
To register your copyright, follow the instructions provided by the U.S. Copyright Office at http://www.copyright.gov . As of January 2010, the registration fee is $35.

It is not necessary to register your copyright in order to assert it. It is recommended that you do so, however, for the following reasons:

If you want to encourage people to seek your permission for uses beyond what the law grants them, you should make it possible for them to find out who you are and how you may be reached.

If you do not register your copyright with the U.S. Copyright Office, you may not be able to collect damages in the event of a lawsuit.

Granting Permissions
As a copyright holder, you may assign or license all or some of your rights to others. For example, you may decide to allow unlimited copying and distribution of your work with the proviso that the uses made of it be strictly non-commercial. Or, you may allow one theatre club to perform your play but not give permission to other clubs.

If you retain copyright to your work, consider marking it with a Creative Commons license in order to provide potential users with information about the types of uses you are willing to grant
automatically. This will obviate the need for the user to get in touch with you to ask permission for those uses, and may help make your work more widely known and used. For more information, please consult http://www.creativecommons.org/license.

Exclusive rights must be granted in writing, but nonexclusive rights (that is, rights you give to more than one party) can be granted orally as well as in writing.

Joint copyright
You may hold copyright jointly with other creators or authors of a work. In such cases, the parties are free to exercise their rights independently, including the right to grant non-exclusive rights to new parties, as long as profits are shared equally. One party cannot re-assign copyright or grant an exclusive right to new parties, however, without the consent of the others.

If you embark upon a work of joint authorship, you are advised to consider the copyright question carefully. You and your colleague(s) should put your copyright agreement in writing, before the project begins.

Appendix 2: Creative Commons Licenses

License design and rationale
All Creative Commons (CC) licenses have many important features in common. Every license helps creators — the CC calls them licensors if they use the CC’s tools — retain copyright while allowing others to copy, distribute, and make some uses of their work — at least non-commercially. Every CC license also ensures licensors get the credit for their work they deserve. Every CC license works around the world and lasts as long as applicable copyright lasts (because they are built on copyright). These common features serve as the baseline, on top of which licensors can choose to grant additional permissions when deciding how they want their work to be used.

A CC licensor answers a few simple questions on the path to choosing a license — first, do I want to allow commercial use or not, and then second, do I want to allow derivative works or not? If a licensor decides to allow derivative works, she may also choose to require that anyone who uses the work — the CC calls them licensees — to make that new work available under the same license terms. The CC calls this idea “ShareAlike” and it is one of the mechanisms that (if chosen) helps the digital commons grow over time. ShareAlike is inspired by the GNU (a Unix-like operating system) General Public License, used by many open source software projects.

CC licenses do not affect freedoms that the law grants to users of creative works otherwise protected by copyright, such as exceptions and limitations to copyright law like fair dealing. CC licenses require licensees to get permission to do any of the things with a work that the law reserves exclusively to a licensor and that the license does not expressly allow. Licensees must credit the licensor, keep copyright notices intact on all copies of the work, and link to the license from copies of the work. Licensees cannot use technological measures to restrict access to the work by others.
CC public copyright licenses incorporate a unique and innovative “three-layer” design. Each license begins as a traditional legal tool, in the kind of language and text formats with which most lawyers are familiar. The CC calls this the “Legal Code layer” of each license.

But since most creators, educators, and scientists are not in fact lawyers, the CC also make the licenses available in a format that normal people can read - the Commons Deed (also known as the “human readable” version of the license). The Commons Deed is a handy reference for licensors and licensees, summarizing and expressing some of the most important terms and conditions. Think of the Commons Deed as a user-friendly interface to the Legal Code beneath, although the Deed itself is not a license, and its contents are not part of the Legal Code itself.

The final layer of the license design recognizes that software, from search engines to office productivity to music editing, plays an enormous role in the creation, copying, discovery, and distribution of works. In order to make it easy for the Web to know when a work is available under a CC license, the CC provides a “machine readable” version of the license - a summary of the key freedoms and obligations written into a format that software system, search engines, and other kinds of technology can understand. The CC developed a standardized way to describe licenses that software can understand called the CC Rights Expression Language (CC REL) to accomplish this.

Searching for open content is an important function enabled by the CC approach. You can use Google and Yahoo! to search for CC content, look for pictures at Flickr, albums at Jamendo, and general media at spinxpress. The Wikimedia Commons, which powers Wikipedia, is a core user of CC licenses as well.

Taken together, these three layers of license ensure that the spectrum of rights isn’t just a legal concept. It’s something that the creators of works can understand, their users can understand, and even the Web itself can understand.