

## PFIC Copyright Compliance Policy

### *Introduction*

This Copyright Compliance Policy of the Pontifical Faculty of the Immaculate Conception (“PFIC”) states the Faculty’s norms concerning adherence to U.S. copyright law, at least as this body of law relates to all text-based, copyright-protected works used in teaching, writing, and research in our Faculty and Library. Its purpose is to assist in compliance with the civil law: it is not a substitute for legal advice. This policy applies to all faculty members, students, administrators, staff, and other employees of the PFIC, and extends to all operations of the PFIC library (viz., the Dominican Theological Library).

### *What is copyright?*

Copyright law exists to protect and promote the sciences, arts, and letters.

The U.S. Congress is empowered by the Constitution to “to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries” (I.8.8). Copyright law applies to written works, musical and dramatic works, paintings, computer software, audio and video files, digital texts, and other materials created by individuals or corporations. While it does not apply to facts, ideas, or data, it does apply to certain compilations of the same, i.e., a composition representing a particular selection or arrangement of facts, ideas, or data. Copyright holders (authors, their employers, their heirs, etc.) have the exclusive right to reproduce, distribute, transmit, adapt, publicly perform, and publicly display their protected works during the duration of copyright protection. To make use of a work protected by copyright one ordinarily needs the permission of the copyright holder. However, the Copyright Act does not apply to certain academic uses.

### *Copyright duration*

In the United States, eligible works created on or after January 1, 1979, are generally protected by copyright from the time they are fixed in a tangible medium until 70 years after the death of their author or creator. (If the author is a corporation rather than an individual, the duration is either 95 years from the material’s first publication or 120 years from the material’s creation, whichever is shorter. Works of multiple authors are protected for 70 years from the death of the last surviving author.) Eligible works created before January 1, 1978, but published between that date and December 31, 2002, are protected either for 70 years after the death of their authors, or until December 31, 2047, whichever is longer. Eligible works created

before January 1, 1978 but not published are protected either until 70 years after the death of their author, or until December 31, 2002, whichever is longer. Works published with a copyright notice between 1964 and 1977, inclusive, are protected for 95 years from the year of publication. Works published with a copyright notice between 1923 and 1963, inclusive, were protected for a term of 28 years, which could be renewed for a further 47 years and may now be renewed for an additional 20 years (making up to 95 years of protection in total). With certain exceptions, works published without notice prior to March 1, 1989, are in the public domain. Also, works published or registered before 1923 are in the public domain.

### *Fair Use*

The Copyright Act bars the unauthorized distribution, reproduction or other use of protected materials, but acknowledges certain “fair use” exceptions in cases when the carefully limited use of protected material may serve the same goal as the copyright, i.e., “to promote the progress of science and useful arts.” The doctrine of fair use does not provide an exclusive list of factors necessary for its application. While the following list of considerations is not exclusive, fair use is commonly distinguished in view of the following criteria:

1. The use’s character or purpose, i.e., it should not be commercial in nature. However, works that are transformative in nature, as opposed to mere reproductions, have been permitted under fair use.
2. The protected work’s nature, i.e., fair use is shaped by a work’s genre. For example, works that are factual in nature (e.g., news pieces) are likely to receive less copyright protection (and are, therefore, likely to be more open to fair use) than creative works (e.g., a short story or poetry).
3. The amount or substantiality of the excerpt, i.e., excerpts must be spare.
4. The effect of use on markets for the work, i.e., it ought not harm the author’s interests

Fair use is a flexible concept. The doctrine provides no bright-line rule. Therefore, the law cannot predict all possible fair uses for all possible works: each case needs to be analyzed individually. To avoid confusion and minimize the risk of copyright infringement, the PFIC interprets the following situations as fair use:

1. Quoting short passages within scholarly work for illustration or clarification
2. Quoting short passages within a summary of someone else’s work
3. Reproducing protected material for classroom use when doing so is unplanned and when there is no time to obtain permission: for example, an instructor might find a story in the morning newspaper that is relevant to that day’s lecture, and copy the article for distribution in the classroom. Photocopies or digital copies

distributed to students by instructors. Protected materials may be copied and distributed to students by their instructor in two cases. First, this may be done if the material is newly published and the instructor could not reasonably be expected to obtain permission in time for using the material: in such a case, a “fair use” portion of the material may be distributed without permission—that is, a portion that is sparse and that leaves the author’s protected interests intact. The PFIC forbids using, making, or distributing unauthorized copies of protected material for more than one course, for more than one semester, and when the use is planned long enough in advance that it would be reasonable to expect permission to be obtained.

### *Course readers*

To create a “course reader” or “course pack” that includes protected materials, formal copyright permission is always required. No unauthorized readers may ever be used or made available at the PFIC. When preparing, ordering, reproducing, or distributing readers, the responsibility for obtaining copyright permission lies with the course instructor, as does full liability for any copyright infringement.

### *Course Reserves*

The Copyright Act allows libraries to make certain copies of protected works for specific archival, interlibrary loan, and preservation purposes. Under no circumstances will the PFIC library make copies of any protected work available as “course reserve material” unless the instructor for the course in question provides written proof of copyright permission. In the event that an instructor wishes to assign readings from books that are prohibitively expensive for most of the students in a given course, the PFIC library will—if the course is to be offered more than once—normally secure 1, 2, or 3 copies of these works (depending on enrollment) to add to its collection and place on reserve for the course in question.

### *Photocopying*

The copying of protected materials is restricted to fair use. Any person using the resources of the library is bound by copyright policies. Making digital copies or photocopies of multiple chapters from a book, multiple articles from a periodical, and copying material for use as a consumable workbook always requires copyright permission.

### *Interlibrary Loan Copies*

The library of the PFIC may participate in interlibrary loans that involve copies of protected articles from periodicals only within the guidelines of the National

Commission on New Technological Uses of Copyright Works (CONTU). This policy does not oblige the library to provide or participate in interlibrary loans.

#### *Digital and Electronic Reserves*

The PFIC requires strict adherence to the 2002 Technology, Education, and Copyright Harmonization (TEACH) Act, under which the digital reproduction and transmission of copyright-protected materials is restricted and regulated for the protection of copyrights. In the absence of a PFIC distance learning program, and of an electronic PFIC Course Management System, no agent of the PFIC will transmit (for example, by e-mail or by shared storage media) any protected materials whatsoever without written copyright permission.

#### *Foreign Copyrights*

As a signatory to the Berne Convention, the U.S. requires that the use in the United States of any work protected by the copyright laws of another signatory country must enjoy the same protections given to works currently under U.S. copyright. Accordingly the PFIC requires that all protected materials, from whatever country, must be handled with all protections due to materials protected with U.S. copyrights.

#### *Notice Warning Concerning Copyright Restrictions*

A printed notice, as described in 37 CFR 201.14 (Code of Federal Regulations), shall be displayed at every photocopier of the PFIC and its library.

#### *Obtaining Copyright Permission*

Those copying or transmitting protected materials, except under the PFIC's understanding of "fair use," must obtain permission from the appropriate copyright holder(s) in advance of any copying, transmission, or use. Permission may be obtained in writing, by electronic communication, or orally. A paper copy of this permission, or written declaration of receiving oral permission, should be filed with the office of the Dean. The Copyright Office of the Library of Congress may be helpful in identifying or locating a copyright holder. Note, however, that copyright is enjoyed by all works upon their being written down or otherwise fixed in a tangible medium, and that formal registration of a copyright is not required for its enjoyment. In lieu of contacting the copyright holder, it may be expedient to use a commercial service such as the Copyright Clearance Center to obtain needed licenses and permissions. In any case, all expenses involved in obtaining copyrights are to be borne by the individual requesting permission, unless another arrangement is made in advance with the Dean or Librarian of the PFIC.

### *Infringements*

All faculty members, students, administrators, staff, and other employees of the PFIC and its library are to report violations of this Copyright Compliance Policy to the Office of the Dean. The Dean will take appropriate steps to discover the facts and stop copyright infringement as the personnel, administrative, and disciplinary policies of the PFIC allow. Continued flouting of the law will be grounds for termination or exclusion from PFIC facilities.

### *Policy review*

This Copyright Compliance Policy will be reviewed annually by the Library Committee and counsel.