

5 FAM 490

USE OF COPYRIGHTED MATERIAL

(CT:IM-107; 06-09-2009)
(Office of Origin: A/GIS/IPS)

5 FAM 491 GENERAL POLICY

(CT:IM-70; 04-19-2006)

- a. Federal agencies do not have a general license to copy and disseminate—in printed, audio, video, or electronic form (including facsimile transmission and electronic mail)—copyrighted material. In addition to paper publications, copyrighted material includes such nonprint forms as microfilm, software, sound recordings, video films or tapes, and Internet items. Purchase of or subscriptions to periodicals, special reports, digital video discs, video tapes, sound recordings, and other copyrighted materials does not carry authority to copy and/or disseminate those materials. Most materials donated to the Department's inventory have been provided under limited conditions, and generally do not include the right to copy. Under copyright law (17 U.S.C.), the "fair use" doctrine (see 5 FAM 494 below) permits, under limited circumstances, the copying of small portions of copyrighted material for certain purposes.
- b. Copyright holders are entitled to compensation for articles and other copyrighted materials copied by the Federal Government beyond that permissible under the "fair use" doctrine, unless the holders grant permission for the use. Department employees must observe copyright rules and restrictions in the conduct of official business. Specific guidance for video clubs (see 6 FAM 538) and off-the-shelf software (see 5 FAM 915.11) supplements the guidance below on "fair use."
- c. Bureaus, offices, and posts can direct specific questions concerning copyright law to the Office of Public Diplomacy and Public Affairs in the Department's Office of the Legal Adviser (L/PD).

5 FAM 492 OBTAINING LICENSES

(CT:IM-70; 04-19-2006)

- a. Publishers of copyrighted material may be willing to negotiate licenses to allow copying in the volume necessary to meet the informational needs of the Department. Offices must contact publishers directly using information in the copyrighted material. Contact the Department's

Library for information on publishers, including their addresses.

b. Licenses can also be obtained from:

Copyright Clearance Center (CCC)

222 Rosewood Drive

Danvers, Massachusetts 01923

(978) 750-8400 FAX (978) 646-8600

World Wide Web home page: <http://www.copyright.com>

CCC can grant permission to reproduce many publications for numerous publishers worldwide. CCC charges an annual service fee plus whatever the publisher sets as the royalty fee per page and/or article.

- c. Bureaus and offices should consult with their executive office to determine if their bureau follows any unique policies for obtaining licenses. Posts abroad with direct subscriptions may make such arrangements through their administrative officers. For posts' needs abroad for material limited to foreign distribution, the Bureau of International Information Programs (IIP) may provide services in obtaining copyright clearance (see 10 FAM 313).
- d. Materials prepared by Department employees on Government time are works of the U.S. Government. Under U.S. law (17 U.S.C. 105), such works do not have copyright protection. When private publishers seek to publish such materials, Government authors must not imply that they are granting the publishers exclusive rights to the material.
- e. The U.S. Government is not prohibited from receiving and holding copyrights transferred to it by copyright owners. Department bureaus and offices must ensure that privately copyrighted material, reprinted in a Government publication, is properly identified in order to not mislead the public. (See U.S. Congress Joint Committee on Printing, Government Printing and Binding Regulations, Title III, para. 17 (February 1990).)

5 FAM 493 INTERNATIONAL COPYRIGHT

5 FAM 493.1 Policy

(CT:IM-70; 04-19-2006)

The United States is obligated, under bilateral and multilateral treaties and agreements, to protect copyrighted works of foreign authorship. The United States extends copyright protection to the works of nationals from, or works first published in, countries that are parties to the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), the

Berne Convention for the Protection of Literary Works, the World Intellectual Property Organization (WIPO) Copyright Treaty, and the WIPO Performances and Phonograms Treaty. The United States has negotiated a number of bilateral agreements that obligate each party to provide copyright protection to works originating in the other party. These obligations extend to nearly all foreign countries, with few exceptions. Department bureaus, offices, and posts should accord copyrighted materials originating in foreign countries, with which the United States has such obligations, the same treatment as copyrighted U.S. works.

5 FAM 493.2 Resources

(CT:IM-70; 04-19-2006)

Bureaus, offices, and posts may contact EB/TPP/MTA/IPC for further information on whether works of nationals of a particular country are protected in the United States under U.S. copyright law.

5 FAM 494 FAIR USE

(CT:IM-70; 04-19-2006)

- a. Copyright law provides for making “fair use” of copyrighted works for such purposes as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Consider the following in determining “fair use”:
 - (1) The nature of the copyrighted work;
 - (2) The amount and substantiality of the portion used;
 - (3) The purpose and character of the use; and
 - (4) The effect of the use on the potential market for, or value of, the copyrighted work.
- b. Anyone who needs legal assistance in determining whether a particular copying falls under the fair use may contact the Assistant Legal Adviser for Public Diplomacy and Public Affairs (L/PD).

5 FAM 495 THROUGH 499 UNASSIGNED