

Copyright and Fair Use Policy

White Mountains Community College encourages its faculty, staff, and students to use multimedia and text resources to enhance teaching and learning while abiding by copyright and intellectual property law, including the U.S. Copyright Act, the Digital Millennium Copyright Act, and the TEACH Act.

WMCC Faculty and Staff Copyright and Fair Use Guidelines

Introduction

Copyright and fair use are complex legal issues. It is impossible to create guidelines that will answer every question. Each use of copyrighted material must be evaluated to determine fair use. The intent of this web page is to provide information to help faculty make informed choices when selecting materials protected by copyrights for use in a classroom, whether traditional, web-enhanced, hybrid, or online. Below are highlighted important portions of copyright law, checklists that faculty, staff, and students can use when deciding how to use copyrighted material, and resources for more detailed information.

Copyright

What is copyright? (Copyright Website - www.copyright.gov)

Copyright protects “original works of authorship, including literary dramatic, musical, artistic, and certain other intellectual works fixed in any tangible means of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated directly or with the aid of a machine or device.” (excerpted from the U. S. Copyright Act)

Copyright:

- Gives certain exclusive rights to “authors” (who can sell or license individual rights separately.)
- Protects published and unpublished works
- Exists to foster creativity

Why copyright matters

- It is “the right thing to do”
- It is the law
- It ensures the continued availability of high-value works

What constitutes copyright infringement

Use of any of the following *without permission*:

- Reproduction
- Republication
- Redistribution
- Public performance
- Public display

The reproduction, replication, and redistribution of a work are among the exclusive rights of the copyright holder.

If infringement is found, penalties may include

- Court-ordered compensation (damages)
- Injunctions against future infringements
- In extreme cases, criminal liability

What is protected by copyright?

- Literature
- Music
- Drama
- Pantomime and dance
- Pictures, graphics, sculpture
- Films
- Sound recordings
- Architecture
- Software

What is not protected by copyright?

- Works that are not fixed
- Titles, names, slogans
- Ideas, facts, data
- Listings of ingredients or contents
- Natural or self-evident facts
- Works of the United States government
- Works for which copyright has expired
- Works dedicated to the public domain

Works enter the public domain when:

- Copyright has lapsed because the work was published:
 - Before 1923
 - Between 1923 and 1963, and the owner failed to register or renew copyright registration
 - Prior to 1989 and failed to include copyright notice
- The work was gifted to the public domain
- The work was produced by the United States government (when used in the U.S.)

What is the duration of copyright

- From moment of creation until 70 years after the author's death
- Works for hire (or anonymous or pseudonymous works):
 - 95 years from publication
 - 120 years from creation (whichever is shorter)

Examples of works in the public domain:

- *The Adventures of Huckleberry Finn* (the book not the stage play)
- *The Wonderful Wizard of Oz* (the book, not the motion picture)

- U. S. Constitution

Fair Use Guidelines (Fair Use Website – www.copyright.gov/fls/fl102.html)

Fair Use in the Classroom

- The Copyright Act does not specify what qualifies
- Analyze on a case-by-case basis
- When in doubt, obtain permission

What is fair use?

- Balances rights of owners with needs of users
- Recognizes that certain uses do not require permission
- Defense to a claim of copyright infringement

Common examples of fair use

- Personal Use
- Quotations in reviews
- Criticism or parodies
- Clips in news reporting
- Spontaneous classroom use
- Scholarship or research

Fair Use Factors and Summary Chart

For this factor...	It is more likely to be fair use if it is...	It is less likely to be fair use if it is...
Purpose (Is it for commercial or non-profit educational purposes?)	-Not for money -An educational use -A transformation rather than a mere reproduction of the original work	-For money -Not an educational use A reproduction of the original work
Nature (Is it creative or factual?)	-A more factual work	-A more creative and/or original work
Amount (What is the proportion used in relation to the entire work?)	-Only small portions relative to the whole work that are used -Directly relevant to the educational purpose	-Substantial portions or the entirety of the work that are used -The heart of the work -Not directly relevant to educational objectives
Market (What will the effect be on the value of the work?)	-Of little economic impact	-Of direct economic impact on an existing or potential market for the work

work?)		
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Classroom Use Guidelines

Generally acceptable classroom uses

- Single copying
- Multiple copies for classroom use
- Educational uses of music
- Use of audio visual works
- Coursepacks may not be duplicated as a form of fair use
- Guidelines are not law

Fair Use “Rules of Thumb”

In general, the faculty member should limit the copies produced to only what is needed for class and the usage should be spontaneous. Under the conditions described below and passing the Four Factor Fair Use Test, the college will support the fair use of copyrighted materials. These “Rules of Thumb” apply to a single semester of use.

Art, photographs, images, charts, diagrams, cartoons – Can use up to five images of a particular author or photographer or 10 percent of a collected body of work

Books – Can use entire book for critical analysis, otherwise use up to 10 percent

Film and videos - Can use up to 3 minutes or 10 percent, whichever is less

Music – Can use entire song, album or composition for critical analysis, otherwise use up to 10 percent of the work.

Newspapers, magazines, online articles –Can use full articles for critical analysis, otherwise use up to 10 percent

Poems – Can use full poem for critical analysis, otherwise 10 percent

Web or television broadcasts – can use up to 10 percent for the current semester only; for News, use the entire broadcasts for the current semester only

Fair Use Checklist

The following Checklist for Fair Use is based on a document created by Professor Kenneth Crews and the staff of the Copyright Management Centers at Indiana University-Purdue University Indianapolis. Based on the four factors of fair use – purpose, nature, amount and effect – the checklist was created to help educators, librarians and others evaluate content uses to determine if fair use applies. This tool provides an important means for recording your fair use analysis, which is critical to establishing “reasonable and good-faith” attempts to apply fair use.

PURPOSE

Favoring Fair Use	Opposing Fair Use
Directly related to classroom use Research Scholarship Nonprofit educational institution Criticism Comment News reporting Transformative or productive use (changes the work for new utility) Restricted access (to students or other appropriate group) Parody	Commercial Activity Profiting from the use Entertainment Bad-faith behavior Denying credit to original author

NATURE

Favoring Fair Use	Opposing Fair Use
Published work Factual or nonfiction based Important to favored educational objective	Unpublished work Highly creative work (art, music, novels, films, plays) Fiction

AMOUNT

Favoring Fair Use	Opposing Fair Use
Small quantity Portion used is not central or significant Portion used is central to work or significant to entire work "heart of the work"	Large portion or whole work used Amount is inappropriate for favored educational purpose

EFFECT

Favoring Fair Use	Opposing Fair Use
User owns lawfully acquired or purchased copy One or few copies made No significant effect on the market or potential market for copyrighted work No similar product marketed by the copyright holder work	Could replace sale of copyrighted work of original work Impairs market or potential market for Copyrighted work or derivative Available licensing mechanism for use of the copyrighted work Permission available for using copyright holder work Numerous copies made You made it accessible on Web or in other public forum Repeated or long term use

Digital Media and Online

What is the TEACH Act?

In 2002, Congress enacted the Technology, Education and Copyright Harmonization Act— or TEACH Act — that expanded the scope of the copyright exception applicable to distance education transmissions (e.g., over the air or over the Internet), as well as to the use of online materials in the context of face-to-face teaching.

The TEACH Act revises Section 110(2) in an effort to permit the use of copyrighted materials in real time and asynchronous digital distance education on much the same terms as in live face-to-face teaching. The exception applies to any copyrighted work other than a work produced or marketed primarily for performance or display as part of “mediated instructional activities” using digital networking (i.e., materials expressly created for use during online distance education classes), subject to certain limitations.

The TEACH Act applies to:

- Non-profit, accredited educational institution and government bodies
- Mediated, instructional activities
- Students enrolled in a specific class, or government employees as part of official duties or employment
- “Live” or asynchronous class sessions
- The use of “reasonable and limited portions”

The TEACH Act does not apply to:

- Textbook materials
- Materials “typically purchased or acquired by students”
- Works developed specifically for online uses

The TEACH Act requires

- Technological measure to prevent retention of works after a course has ended and prevention of further distribution of works
- Dissemination of the institution’s copyright policy to students, faculty and staff
- Notification of students that materials used in connection with their courses may be subject to copyright protection

The TEACH Act allows:

- Performance of non-dramatic literary or musical works and/or reasonable portions of any other work
- Display of any work in an amount that is typical in a classroom situation

What TEACH Act does not allow:

- Duplication of electronic reserves, coursepacks, (electronic or paper)
- Duplication of textbooks or other digital content provided under license from the author, publisher, aggregator or other entity
- Conversion of materials from analog to digital formats (except in certain circumstances)

What is the Digital Millennium Copyright Act (DMCA)? (Website - www.copyright.gov/legislation/dmca.pdf)

- Amended 1976 Copyright Act by including “digital” material
- Disallows tampering with encryption systems designed to prevent copying
- Effects the sharing of files via the internet (ie. Napster).

WMCC Copyright Procedures

Obtaining permission for use of copyrighted material

If the use of copyrighted material exceeds fair use, a faculty or staff member must obtain written permission from the copyright holder. If you have questions regarding the holder of the copyright, the Copyright Clearing House (www.copyright.com) can assist in identifying the holder. There is a fee for this service. Authorization for use of this service should be obtained from your department head or division director. If there is a cost associated with the use of the copyrighted material, authorization for payment must be obtained in advance from the department head or division director. Proof of authorization of use or compliance with fair use must be provided to college staff prior to requests for duplication or online dissemination. A copy of this authorization should be maintained by the faculty or staff member's department.

Source(s):

Copyright Management Center at Indiana University-Purdue University Indianapolis Manchester Community College (CT) Fair Use Policy

MCC (CT) Faculty and Staff Copyright and Fair Use