



Copyright Guidelines

for the
Maricopa Community Colleges

Office of General Counsel
Maricopa County
Community College District



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Copyright Administrative Regulation

A. It is the intent of the Governing Board of the Maricopa County Community College District to adhere to the provisions of the U.S. Copyright Law (Title 17, United States Code, Section 101, et seq.). Though there continues to be controversy regarding interpretation of the Copyright Law, this policy represents a sincere effort by the Board to operate legally within the District.

B. The Governing Board directs the Chancellor or his designee(s) to develop and distribute to employees guidelines that (1) clearly discourage violation of the Copyright Law and (2) inform employees of their rights and responsibilities under the Copyright Law.

C. Each college president or provost and the Chancellor shall name an individual(s) at each district location who will assume the responsibilities of distributing copyright guidelines, act as a resource person regarding copyright matter and provide training programs on current copyright laws.

D. Employees are prohibited from copying materials not specifically allowed by the (1) Copyright Law, (2) fair use guidelines, (3) licenses or contractual agreements, or (4) other permission.

E. The Governing Board disapproves of unauthorized duplication in any form. Employees who willfully disregard this Board policy and/or the aforementioned copyright guidelines do so at their own risk and assume all liability for their actions.

F. In order to assist employees and students in complying with the Copyright Law, appropriate notices shall be placed on or near all equipment capable of duplicating copyrighted materials.

MCCCD Copyright Guidelines

Introduction

It is the policy of the Maricopa County Community College District to respect the rights of copyright owners and to follow the Copyright Act, 17 U.S.C. § 101 et seq. The MCCCD Copyright Guidelines present the District's position regarding use of copyrighted works. Copyright law is complex and still unsettled on many issues, especially in the educational arena. The Guidelines should keep you within the law, but there are no guarantees. Every person who uses District resources should abide by these Guidelines. Failure to follow the Guidelines may create individual liability for copyright infringement.

Guidelines in a Nutshell

The Guidelines are designed to help MCCCD faculty, staff and students abide by copyright laws and to inform them of their rights and responsibilities under copyright law. The Guidelines provide direction for using potentially copyrighted materials in general and in specific media. The Guidelines, in a nutshell, teach:

- Not all educational uses are "fair uses." Whether a proposed use qualifies as a fair use depends upon the facts of the case. Fair use is discussed in detail in the Fair Use section of the Guidelines.
- Public domain works are available for all to use without restriction. Public domain works include older works or works created by the federal government. Unless a work was published before 1923, you should presume it is copyrighted. If it was published after March 1, 1989, it is almost

certainly copyrighted. A detailed description of public domain works is set forth in the Public Domain section of the Guidelines.

- If the material is copyrighted and the use is not a fair use, you must obtain permission to use the material. Some contact information and a form for obtaining Permission are set forth below.
- When dealing with issues of attribution, destruction or other changes to works of visual arts, the artist's moral rights may also need to be cleared.

Use of MCCCDC Resources

MCCCDC resources may only be used to reproduce or otherwise use copyrighted material as permitted under the Guidelines. MCCCDC resources are broadly defined to include photocopiers, computer terminals and servers. Examples of uses that may fall outside the Guidelines include copying software without permission, file swapping over the Internet and photocopying. Note that MCCCDC's Computing Resource Standards specifically prohibit the use of MCCCDC computing resources to infringe copyrights or other intellectual property rights.

COPYRIGHT BASICS

Much of the material used in teaching is copyrighted, including computer software, books, music and photographs. Thus, copyright law restricts our rights to copy, display, perform and distribute these works without permission. Often we must obtain permission from the copyright owner to use the works. Sometimes, a work is in the public domain, available for all to use freely or our use is a "fair use," allowing us to use the works without the copyright owner's permission. Each of these situations is discussed separately, below.

Clearance of copyrights can often be complicated and frustrating. It is necessary, nonetheless, as the potential liability can be significant. For example, the Copyright Act allows courts to award statutory damages up to \$150,000 per work infringed for willful infringement. 17 U.S.C. § 504. In addition, you may be contributorily liable if your actions assist in others' infringement. For example, if you post a copyrighted work on a website, you may be contributorily liable for each person who copies the work off the site.

What is a copyrightable work?

A work is copyrightable if it is an original work of authorship fixed in a tangible medium of expression. The copyright is created at the moment of fixation. For example, copyrights exist from the time a poem leaves the poet's mind and is written down on paper. Neither registration nor a copyright notice (for works published after 1989) is required for copyright protection. Categories of copyrightable works include:

- Literary works
- Musical works, including accompanying words
- Dramatic works, including accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Copyright does not protect ideas, principles, concepts or discoveries. 17 U.S.C. § 102. Copyright also does not protect the following:

- Titles, short phrases or slogans

- Works not fixed in a tangible medium of expression, such as improvisational speeches that are not written down or recorded
- Works containing no original authorship, such as standard calendars and height and weight charts

What is a copyright?

A copyright gives its owner the exclusive right to copy the work, prepare derivative works based on the work and distribute the work via sale or other transfer of ownership or via rental, lease or lending. In addition, certain categories of copyrightable works have additional rights, such as public display and performance. For example, the exclusive right to perform the work publicly is included in the copyright for literary, musical, dramatic, choreographic, pantomimes, motion pictures and other audiovisual works. Similarly, the exclusive right to publicly display is included in copyrights for literary, pictorial, graphic, sculptural, musical, dramatic, choreographic works and pantomimes. Moreover, the copyright in a sound recording includes the exclusive right to perform the work publicly by means of a digital audio transmission, such as the transmission of a song over the Internet. 17 U.S.C. § 106.

Each "copy" "right" (the right to copy, distribute, etc.) in a single work is a separate right and may be owned by different entities. In addition, multiple copyrightable works may exist in one "work." For example, a song you hear on the radio has three separate underlying copyrightable works: the sound recording (often owned by the studio); the musical score (often owned by the artist); and the lyrics (often owned by the author). The copyright in all three works must be separately cleared.

What are derivative works?

A derivative work is a work based upon one or more pre-existing works, such as a translation of a text or a movie based upon a novel.

What are moral rights?

Authors of works of visual art may also have "moral rights." A work of visual art is a painting, drawing, print, or sculpture that exists in a single copy or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author. A photograph may also be a work of visual art if it was produced for exhibition purposes only and exists in a single copy signed by the author or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author. Certain works, such as works for hire and advertisements, are excluded from the special "moral rights" protections.

Moral rights allow authors of visual art to control the use of their names and to prevent intentional distortion, mutilation or other modification of their works that would be prejudicial to their honor or reputation and to prevent the destruction of a work of recognized stature. 17 U.S.C. § 106A.

Are digital works covered by copyright?

Copyright covers works in both traditional and newer media, including digital media. In 2000, Congress passed the Digital Millennium Copyright Act ("DMCA"), which addresses the use of copyrighted works in digital media. It both provides additional protections for copyright owners and "safe harbors" for certain users of copyrighted material.

The DMCA prohibits the removal or alteration of copyright management information, which is the data authors include in their works to protect their copyright interests. Copyright management information includes the title of the work, the author of the work, the copyright owner of the work, and terms and conditions for use of the work. 17 U.S.C. § 1202.

The DMCA also prohibits the circumvention of copyright protection systems. Circumvention of a copyright protection system means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure without the authority of the copyright owner. Nonprofit libraries, archives and educational institutions are allowed to circumvent protection systems in limited circumstances, including encryption research and to determine whether to acquire a copy of the protected work. As much of this law is continuously changing, faculty and staff should not undertake such activity without first contacting the Office of General Counsel at 480-731-8878. 17 U.S.C. §1201.

The DMCA also provides protection for entities that serve as conduits of communication, such as service providers and search engines. 17 U.S.C. § 512. MCCCDC believes it is a service provider under the Act. Accordingly, MCCCDC has registered its DMCA agent with the Copyright Office and has posted a DMCA Notice on its website.

Also note that digitizing a work may be an infringement. You should not digitize a copyrighted work unless you have specific permission to do so or you believe digitization fits within fair use. Permission to use or copy the work may not include the right to digitize the work. When considering if digitization is a fair use, always check to see if a digital copy of the work is available for a reasonable fee. If so, you should purchase or license the digital copy rather than digitizing the analog/paper copy you currently possess.

PUBLIC DOMAIN WORKS

Works that fall into the public domain are free for all to copy and use. With limited exceptions for foreign works, once a work falls into the public domain, its copyrights cannot be regained. For example, Shakespeare plays are clearly in the public domain. They are free for anyone to copy, perform or to use as a basis to create derivative works.

How do you know if a work is in the public domain?

It is not safe to assume that works have lost their copyrights just because they are old. However, there are a few safe harbors. Works "published" before 1923 are now in the public domain. But be careful. "Publication" is a legal term of art and is discussed in detail below. Works dedicated to the public domain are free for all to use as are most works of the U.S. government¹.

Two different copyright duration structures exist today. One measures copyrights by an initial term and requires renewal. The other measures copyrights by the life of the author. Which structure applies depends upon when the work was created or published.

- Works created before 1978 ("Older Works") were protected from date of publication for an initial 28-year term of protection. After the initial term, copyrights had to be renewed. If not renewed, the copyright expired and the work was ejected into the public domain. For works that were originally copyrighted after 1922 and renewed before 1978 renewal is automatic to extend the total term to 95 years (a first term of 28 years plus a renewal term of 67 years) from the end of the year in which they were originally secured.

Older Works that remained unpublished by the end of 2002 expired on that date or will expire seventy years after the author's death, whichever is later.

¹ Some federal agencies are exempted from this rule. For example, works created by the United States Postal Service, which is an independent establishment of the executive branch of the United States government, are copyrightable. The copyrights in works such as stamps are owned by the Postal Service and cannot be reproduced without permission.

- Works created on or after Jan. 1, 1978 ("Newer Works") are protected from time of creation - when the work is fixed in a tangible medium. Copyrights exist for the life of the author plus 70 years. Works with corporate authors, works made for hire and anonymous works are protected for the shorter of either 95 years from publication or 120 years from creation.

Is the entire work in the public domain?

Each separate element within a work must be analyzed to determine whether copyrights still exist. For example, a movie might have fallen into the public domain, but the copyrights in the movie's soundtrack may still exist. Because the two cannot be easily separated, you may have trouble copying the movie without infringing the rights to the soundtrack. Works within a compilation, such as a magazine or anthology, may each have separate copyright durations and owners. The fact that one work within the compilation is in the public domain does not necessarily mean the other works are as well. Similarly, the text and illustrations in a book are separately copyrightable. Even if the text is in the public domain, you must independently research the copyright status of the illustrations.

This work is in the public domain, but the owner is still charging me to use it. Why?

The owners of original works may occasionally charge access fees, regardless of whether copyrights still exist in the works or whether they own the copyrights. You are paying for either access to the original or for pristine copies of the works. Assuming the public domain work, or a good copy of the work, is not available from other sources, you will need to pay the access fees if you want to copy the work and, like any private contract, you must follow the owner's rules of usage, if any.

What is "Publication"?

Publication, in its simplest terms, is what is commonly thought of when a work is published. It is the first date of public release. For example, a daily newspaper is "published" on the day it is printed and sold to the public.

Other forms of transfer besides an outright sale- such as by rental, lease or lending - can also constitute publication. The key element is the distribution of - or the offer to distribute - copies to the public. Written texts will often list their dates of publication on the first few pages of the book along with other legal information.

It can be more difficult to determine when other works, such as works of fine art, were "published" because many such works only exist in their single, original copy. Publication still means the distribution of the work (or copies of the work) to the public by sale, rental, leasing or lending - or the public offering to do so, such as through a public art auction. For this reason, you may be able to determine whether a work was published by examining its chain of title. Generally, if the work is printed in an art book or if the work was turned into postcards sold in stores, it is safe to assume the work has been published, assuming the publication was authorized by the copyright owner. However, public performance (e.g. of a play) or public display (e.g. of a work of art) by itself does not constitute publication and the purely private sale of a work of art is generally not considered publication.

Publication is an important concept. Copyright protection of works created before 1978 began at publication². Until 1989, works published without a copyright notice fell into the public domain. Since 1989, copyright notices are no longer mandatory, but offer many beneficial rights. Thus, assume any work created after 1989, even if it was published without a copyright notice, is protected by copyright.

I added something new to a public domain work. Can I protect it?

² The 1909 Copyright Act also allowed authors to register the copyrights in their unpublished works.

It is possible to create newly copyrightable material based upon public domain works. For example, if a theater group performs (and records) a highly stylized, interpretive performance of a Shakespeare play and adds original elements, it can create copyrights in the new, original elements it added. This would prevent others from videotaping the group's performance or using the new, original elements the group created. Naturally, the theater group could only prevent others from using the truly new or unique components of the performance. They could certainly not prevent others from using or performing the underlying Shakespeare play.

Fair Use Principles

What is "Fair Use"?

The doctrine of fair use allows for the use of copyrighted works without the owner's permission. It protects limited uses of copyrighted works from being an infringement. The doctrine is, however, determined on a case-by-case basis, sometimes with contradictory results. Because of this uncertainty, fair use must be approached with caution. As a rule of thumb, if you are uncertain after reviewing the factors below whether a use is a fair use, assume it is not.

The Copyright Act provides that the "fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use¹), scholarship, or research, is not an infringement of copyright." Again, not all educational uses are fair use. Four factors are considered in determining whether the use of a work is a fair use:

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.

17 U.S.C. § 107. Courts decide fair use by weighing each factor individually and then determining which way the combination of factors tips. Each factor is discussed in detail below.

1. Purpose and Character of Use

Certain types of uses typically favor fair use, including teaching, research, scholarship, criticism, news reporting and parody. Also favoring fair use are uses that transform the copyrighted work for a new purpose, rather than pure copying. The Supreme Court has defined transformative use as a use that "adds something new, with a further purpose, or different character, altering the first with new expression, meaning or message." Other types of uses are typically viewed as not fair use, including situations where the user is engaged in commercial activity or is otherwise profiting from the use. Failure to give credit to the original author will often also weigh against fair use. Use of a copyrighted work for entertainment purposes is less likely to be deemed a fair use than educational purposes.

2. Nature of Copyrighted Work

Creative and fiction-based copyrighted works are given greater protection than works of a factual or non-fiction nature. Similarly, non-published works are given greater protection than published works.

3. Amount and Substantiality of Work Used

This factor measures both the quantitative and qualitative nature of the portion of the work used. The smaller the portion of a work used, the more likely the use is a fair use. Conversely, use of a substantial portion of a work or the heart of a work is less likely to be considered fair use. For example, use of three lines from a multi-volume work is likely fair use, but use of three lines from a six-line poem is less likely to be fair use.

4. Effect of Use on Market for Work

The Supreme Court has said to "negate fair use one need only show that if the challenged use should become widespread, it would adversely affect the potential market for the copyrighted works." Use of a work that replaces the need for others to purchase or license the work, especially if the work is easily purchased or licensed, will weigh against fair use. Making just a few copies, available to only a limited number of people, is likely to weigh in favor of fair use.

Do any "Safe Harbors" Exist for Educational Uses?

Congress incorporated into the copyright law numerous guidelines for educational institutions' use of copyrighted works ("Congressional Guidelines") to provide more certainty in determining fair use. These guidelines are not law, but courts give them deference. MCCCDC endorses these guidelines as representing the minimum, not maximum, boundaries of fair use. The guidelines are discussed in detail under each media section, such as printed materials and music. Uses exceeding the scope of the guidelines may still qualify as fair use when analyzed under the four fair use factors.

In addition, numerous organizations have worked together towards creating additional guidelines for the use of copyrighted materials by nonprofit educational institutions. The guidelines on the use of copyrighted materials in the creation of multimedia works emerged from the Conference on Fair Use (CONFU) and are attached as further guidance. Although these guidelines were not formally adopted, a large number of organizations approved them. Again, these guidelines represent the minimum, not the maximum, scope of fair use.

Examples of Fair Use Cases in the Educational/Scholarly Context

Cases dealing with fair use in an educational or scholarly context are rare. Nonetheless, for discussion purposes only, a sampling of cases dealing with fair use in an educational or scholarly context is set forth below. Remember, however, fair use is determined on a case-by-case basis and the outcome of the analysis can be changed with a single fact. Thus, you should not view the below cases as examples of permitted (or prohibited) activities.

Basic Books, Inc. v. Kinko's Graphics Corp., 758 F. Supp. 1522 (S.D.N.Y. 1991). Plaintiff publishers brought suit against Kinko's, a for-profit copy shop, claiming its copying of excerpts from books for course packs violated their copyrights. The court rejected Kinko's fair use argument under both the four-factor analysis and the Congressional Guidelines. The decision explicitly did not consider copying performed by students, libraries, or on-campus copy shops. *Purpose and Character of Use*: This factor weighed against fair use. Although the use of the course packs was "no doubt" educational in the hands of students, the use in the hands of Kinko's employees was commercial. Kinko's directly profited from copying the works without paying permission fees. The court also rejected Kinko's argument that it was acting merely as an agent of the educational institutions. *Nature of Work*: The works were factual in nature, weighing in favor of fair use. *Amount of Work Used*: This factor weighed against fair use. The portions copied were critical parts of the books, since that was the likely reason the professors chose them for their classes. Moreover, the qualitative measure was significant as the passages copied ranged from 5% to 25% of the works and most often captured an entire chapter of a book. *Effect on Market*: This factor weighed against fair use. The court found the copying displaced the need for students to buy the texts from which the material was derived and thus competed directly with the copyright owner. It also made payment of permission fees on

the materials unnecessary, further harming the market. *Guidelines*: The court also pointed to the Congressional Guidelines' prohibition against creating anthologies as weighing against fair use.

Princeton Univ. Press v. Michigan Document Serv., Inc., 99 F.3d 1381 (6th Cir. 1996). Under facts similar to the Kinko's case, the Sixth Circuit also found a commercial copy shop's copying for course packs was not fair use. Again, the challenged copying was by a commercial entity that directly profited from the use of the copyrighted work. The court, however, cautioned that "the issue is by no means free from doubt" that similar copying by students or professors would be fair use.

Am. Geophysical Union et al. v. Texaco Inc., 60 F.3d 913 (2d Cir. 1994). A group of publishers brought suit against Texaco based on the institutional, systematic copying of articles from scientific journals for researchers' personal libraries. The court expressly excluded copying for individual purposes from its decision. *Purpose and Character of Use*: This factor weighed against fair use. The copying was deemed an intermediate use because, although for research purposes, the ultimate goal of the research is to benefit a for-profit entity. The researchers most often copied the articles for archival use, rather than immediate use in research, making the use non-transformative. *Nature of Work*: This factor favored Texaco because the material was essentially factual in nature. *Amount of Work Used*: The court characterized each "work" as the articles in the journals, rather than the journals themselves. Thus the entire works were copied, weighing heavily against fair use. *Effect on Market*: The court focused on the market for licensing fees for copying individual articles in finding that Texaco's activities have an adverse effect upon the market.

Warren Publishing Co. v. Spurlock, 645 F.Supp.2d 402 (2009).

Defendant, Spurlock published a book-form biography and illustrated retrospective of movie monster artist Basil Gogos. Spurlock's book contained 160 reprints of Gogos's work, including 24 reproductions of Gogos's artwork taken from Plaintiff, Warren Publishing Co.'s copyrighted movie monster magazine covers. At summary judgment, the court ruled that Spurlock acted within fair use, based on its reasoning that the purpose and amount factors weighed strongly in Spurlock's favor. Central to the court's reasoning was the transformative nature of the use of the images in a biographical compilation. The court considered Spurlock's purpose to weigh in favor of fair use even though the images were reproduced in a commercial product. Also significant was the court's determination that the amount of the work used was based on an entire magazine issue rather than its cover image.

Bill Graham Archives v. Dorling Kindersley Ltd., 448 F.3d 605 (2d Cir. 2006).

Dorling Kindersley (DK) published a comprehensive "coffee table" book documenting the thirty-year history of the famous rock band, the Grateful Dead. The book included seven copies of old concert posters in which the plaintiff, Bill Graham Archives (BGA), owned the copyrights. The court found that DK's use of the posters was within the limits of fair use. In this case, the court ruled that using copied artworks in a reduced size may be fair use so long as the use is transformative and not for purposes of exploiting the creative nature of the copied works. Even when the full work is reproduced, it can still be fair use if the amount used was necessary to further the purpose of the fair use.

National Center for Jewish Film v. Riverside Films LLC, 2012 WL 4052111 (C.D.Cal. Sept. 14, 2012).

Defendant, Riverside Films created a documentary about a 19th Century Yiddish author that examined the 150 years of Jewish history using clips from four films copyrighted by the plaintiff. The court ruled that the use of plaintiff's films was a fair use because it added and transformed the original films through editing and commentary. The court considered bad faith, and it is worth noting that while bad faith is not a statutory factor in the determination of fair use, the bad faith or good faith of the user can be an important consideration in swaying the court for or against a finding of fair use.

SOFA Entertainment, Inc. v. Dodger Productions, Inc., 2013 WL 1004610, (9th Cir. 2013).

Defendant, Dodger Productions used a seven-second clip, owned by SOFA Entertainment, of Ed Sullivan's introduction of the Four Seasons on *The Ed Sullivan Show* in its musical *Jersey Boys*. The court ruled that the defendant's use of a clip from plaintiff's work was fair use, particularly because it not

only did not harm the plaintiff's copyright but also because society's enjoyment of Dodger's creative endeavor was enhanced with its inclusion.

Cariou v. Prince, _ F.3d _ (2d Cir. 2013).

Plaintiff Patrick Cariou published a book of photographs of Rastafarians and landscapes taken in Jamaica. Defendant Richard Prince utilized entire images or as well as portions of Cariou's photographs in 28 paintings, many of which were shown in the Gagosian Gallery. The court held that Prince's works made fair use of Cariou's photographs. Appropriation art that utilizes portions of or entire works created by others might be fair use if they are changed to create a new expression or communicate a different result.

Authors Guild, Inc. v. HathiTrust, 2012 WL 4808939 (S.D.N.Y. Oct. 10, 2012).

A number of university libraries entered into agreements with Google under which Google would digitize works in the libraries' collections and provide them with digital copies. Many of those libraries deposited the digital copies with the HathiTrust Digital Library. HathiTrust displayed in full only those books that were in the public domain or for which the copyright owner had authorized use. For protected works, HathiTrust provided a full-text search that only showed the page numbers on which a term was found and the number of times the term appeared on each page. The court ruled that the defendants' use of the works constituted fair use. Digitizing and making available works in a limited capacity can be lawful under rigorously controlled conditions, especially when the use is transformative and specifically for use by scholars and print-disabled persons. This decision is currently on appeal.

Cambridge University Press v. Becker, 863 F.Supp.2d 1190 (N.D.Ga 2012).

Plaintiffs Cambridge University Press, Sage Publications and Oxford University Press sued officials at Georgia State University ("GSU") for copyright infringement. The publishers' complaint arose from Georgia State's practice of allowing faculty to use university networks and university library E-reserves systems to copy and distribute book excerpts to students without paying licensing fees. Officials for GSU, a public university, claimed that the creation and use of the unlicensed copies were allowable pursuant to the [fair use doctrine](#), and therefore not copyright infringement. The court rejected all but five of 75 claims that the Georgia State University (GSU) Library's system of e-reserves infringed copyrights owned by Cambridge University Press, Oxford University Press, and Sage Publications. This is a case of first impression and it will strongly influence further judicial considerations of the issue. This case will most likely go up for appeal.

Conducting a Fair Use Analysis

The Fair Use checklist below can be used to assist you when conducting a fair use analysis. Fair use is very fact- and context-dependent. We recommend contacting MCCC's general counsel for further input after you have reviewed this checklist if you are in any doubt. This checklist can help you organize your thoughts, but it DOES NOT tell you if a proposed use is fair or not and is not a substitute for legal advice.

Please note that no single factor is decisive of fair use, and on any given factor, you may find that some aspects of your proposed use fall in the "favors fair use" column, while others simultaneously "weigh against" fair use. There also may be other relevant considerations that do not appear in this checklist. Many considerations are relevant, and only by looking at all of the facts, across all the issues, can you make a reasonable estimation about whether your use is fair or not.

Fair Use Checklist (requires [Adobe Reader](#)).

<u>Fair Use Checklist</u>	
<u>Purpose</u>	
<u>Favoring Fair Use</u>	<u>Opposing Fair Use</u>

- 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

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

Amount

Favoring Fair Use

- Small quantity (no more than 10% of work)
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

Effect

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work

Opposing Fair Use

- Could replace sale of copyrighted work

<input type="checkbox"/> One or few copies made	<input type="checkbox"/> Impairs market or potential market for copyrighted work or derivative
<input type="checkbox"/> No significant effect on the market or potential market for copyrighted work	<input type="checkbox"/> Available licensing mechanism for use of the copyrighted work
<input type="checkbox"/> No similar product marketed by the copyright holder	<input type="checkbox"/> Permission available for using work
	<input type="checkbox"/> Numerous copies made
	<input type="checkbox"/> You made it accessible on Web or in other public forum
	<input type="checkbox"/> Repeated or long term use

Used under a [Creative Commons BY license](#) from the [Copyright Advisory Office of Columbia University](#), Kenneth D. Crews, director.

Permission

Unless your use of a work is [fair use](#) or the work is in the [public domain](#), you will need to get permission before using it. If, after conducting background research and due diligence, you are still uncertain about the copyright status of the work, you should err on the side of caution and seek permission. Though it is important to properly credit the source of a work, giving credit to an author will not substitute for getting authorization or paying royalties, if such are required.

Who owns the copyrights in the work?

Generally, the author of a work owns the copyrights in the work. An exception is for "works for hire," which are works created by an employee within the scope of her duties. Copyrights for works for hire are owned by the employer. Copyrights may also be transferred through sale or otherwise.

How do I find the owner of a copyright?

There are several resources to help you locate the owner of copyrights. You should remember, though, that each "copy" "right" is separately assignable, so it is possible more than one person or entity may be involved. The Internet is an invaluable resource and you may find answers by entering the author's name, the title of the work and the word "copyright" into an Internet search engine.

Do not overlook the obvious. Many works contain copyright notices, which provide the name of the copyright owner. Contact that person or entity first. Websites often contain copyright notices or contact information in the legal notices or privacy notice sections of the site. Remember, though, that just because you found a work on a website does not mean the website proprietor owns the copyrights in the work - or has permission to reproduce it.

If the work does not contain a copyright notice, try contacting the publisher for more information. Another resource is the author or his/her family. Though you cannot be certain that the author kept the copyrights, he/she should not be overlooked as a resource. It is important to exercise some caution when dealing with heirs and family members of deceased authors, as they may believe the copyrights belong to the family, when in fact the copyrights may have been transferred or assigned.

The U.S. Copyright Office also has a searchable copyright database on its website at www.copyright.gov, which contains records of registrations and ownership documents since 1978. Remember, though, that copyrights now exist at creation and the registration of copyrights is not mandatory. Private search companies can also assist your research, but can be costly.

Some companies specialize in representing artists or authors within an industry and may act as the sole licensing agent. We have provided some of the most common sources below.

- **Music Industry:**

1. BMI, 320 W. 57th Street, New York, NY 10019, www.bmi.com.
2. ASCAP, One Lincoln Plaza, New York, NY 10023, www.ascap.com.
3. SESAC, 152 West 57th Street, New York, New York, NY 10019, www.sesac.com.
4. The Harry Fox Agency, 711 Third Avenue, 8th Floor, New York, NY 10017, www.harryfox.com.
5. Recording Industry Association of America (RIAA), www.riaa.com.

- **Fine and Graphic Arts:**

1. AMICO Art Museum Image Consortium, www.amico.org.
2. Visual Artists and Galleries Association (VAGA), 350 Fifth Avenue, Suite 6305, New York, NY, www.vagarights.com.
3. Artists' Rights Societies (ARS), 536 Broadway, 5th Floor (at Spring Street), New York, NY 10012, www.arsny.com.
4. Graphic Artists Guild, 90 John Street, Suite 403, New York, NY 10038, www.graphicartistsguild.org.
5. Society of Children's Book Writers and Illustrators (SCBWI), 8271 Beverly Boulevard, Los Angeles, CA 90048, www.scbwi.org.

- **Syndicates (News Columns, Editorials and Cartoons):**

1. Universal Press Syndicate, Permissions Director, Andrews McMeel Universal, 4520 Main Street, Kansas City, MO 64111-7701, www.uexpress.com.
2. Tribune Media Services, Inc., 435 North Michigan Avenue, #1500, Chicago, IL 60611, www.tribunemediaservices.com.
3. Creators Syndicate, Inc., 5777 West Century Boulevard, # 700, Los Angeles, CA 90045, www.creators.com.
4. Los Angeles Times Syndicate, 2 Park Avenue, Floor 18, New York, NY 10016, www.newscom.com (*note: there is a fee to view the site*).

- **Photography:**

1. AP/Wide World Photos: www.apimages.com.
2. [Jupiter](http://www.jupiterimages.com) Images: www.jupiterimages.com.
3. [Time](http://www.timelifepictures.com) & Life Pictures: www.timelifepictures.com.
4. Worldwide Photojournalism: www.blackstar.com.

- **Printed Materials:**

1. Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923, www.copyright.com.
2. Publication Rights Clearinghouse, National Writers Union, 113 University Place, 6th Floor, New York, NY 10003, Fax 212-254-0673, www.nwu.org.

- **Plays/Musicals:**

1. Samuel French, Inc., 45 West 25th Street - Dept. W, New York, NY 10010, 212-206-8990, www.samuelfrench.com.
2. Dramatists Play Service, Inc., 440 Park Avenue South, New York, NY 10016, 212-683-8960, www.dramatists.com.
3. Music Theatre International, 545 Eighth Avenue, New York, NY 10018, 212-868-6668, www.mtishows.com.

- **Movies:**

1. Motion Picture Licensing Corporation, 5455 Centinela Avenue, Los Angeles, CA 90066, 800-462-8855, www.mplc.org.
2. Movie Licensing USA (serves public schools K-12 and public libraries), 1-888-267-2658, www.movlic.com.

Orphan Works – When a copyright owner cannot be found

An “orphan work” is a common term used to describe a work that cannot be matched with an owner, or the owner of the work is known but cannot be found. Congress has considered legislation to address the problem of orphan works, but as of yet, nothing has been passed. So, if you find a work that you want to use and discover that it is an orphan work, what do you do? The tips below will help guide you in your decision making process.

1. Copyright owner is unknown.
Often times, the work does not have an owner name or the name of the artist. After properly searching through catalogs, databases and any other sources, it may be a fruitless effort. In addition, you may have found that the artist died or the company no longer exists. In this case, it is best to go back to fair use, use an alternative work or alter your planned use of the work. In any case, it is better to be err on the side of caution and not use the work until permission has been obtained. Another option is to ensure that your use of the work would be considered fair use.
2. Copyright owner is known but cannot be located.
This is the clear case that you know who the owner is but cannot find a way to contact that person or entity. After searching various listings, the Copyright Office records, and directories, you simply cannot find contact information for the copyright owner. In this case, as in the case above, it is recommended that you find an alternative work or use the work in a way that would be considered fair use.
3. Copyright owner was contacted but there is no response.
You have a name and contact information but the copyright owner will simply not respond to your request. In this case, there is no choice but to abandon your efforts and seek an alternative.

If you have discovered that the work you want to use is an orphan work, there are a few possible solutions as were briefly mentioned above. For example, you can look to the fair use doctrine or replace the work with an alternative work. The primary point of obtaining permission to use a copyrighted work is to avoid infringing someone else's rights. Certainly, you should keep a paper record of your due diligence efforts. Though records will not excuse you from an infringement, it can help show that the infringement was innocent, which could reduce, or in some cases even eliminate, the amount of monetary damages available to the copyright owner. Certainly, you should conduct a reasonable amount of searching. At a minimum, you should conduct a search of the records of the U.S. Copyright Office and conduct a thorough Internet search. You should also use any well-known resources or references in your particular field. If you cannot clear the rights in a work, you should use a different work. Also, feel free to contact the Office of General Counsel at (480) 731-8878 for more guidance.

How do I get permission?

Once a copyright owner is located, you will need to contact the copyright owner and obtain written permission to use the works. You can initiate contact by email, telephone or letter. There are many types of licenses and permissions. It is important to remember that if you enter a license for use of a work, you are entering a binding contract with another party. The contract will bind you personally as only designated individuals have the authority to legally bind the District. If you enter a license, you will be bound by the terms of the license, even if the license restricts your rights more than the copyright laws. For example, a license may require you to use a certain percentage of a work or prohibit you from paraphrasing passages. For works of art, the licensor may require you to use only high-quality copies of the work (which they will often provide for a fee) and may further require specific credit lines or require you to get pre-approval of the reproduction quality of the work before you incorporate it into your project.

Be sure that the licensor warrants that it owns the rights it is granting you - or that it has the authority to act on the behalf of the rights holder.

Several other typical issues you will face include:

- Is the license exclusive? Unless you are paying a lot of money or entering a complex agreement, it will almost always be non-exclusive;
- What is the geographical extent of the license (e.g. North American rights, worldwide rights, U.S. rights, foreign rights, English language rights, foreign language rights);
- The owner will want to know the purpose of your project, particularly whether it is of a commercial or educational nature and the number of copies you will make;
- What is your project's medium and will you be allowed to re-use the work if you change the medium (e.g. from a strictly written format to a website format);
- What fees are involved and are they a flat fee or are royalties and an advance payment required; and
- Is a credit line required and what is its exact wording and placement.
- Use of a work on a website creates unique infringement concerns for the copyright owner. The owner may require you to protect the work from further copying by any number of means, including user names, passwords, watermarking or using software that prevents copying.

What written form should I use?

Many publishers, larger entities and institutions have their own license and permissions departments and can provide standard forms for your use. Many of their forms are available online. It will often speed up the permissions process to use the licensor's standard form, but be sure you read and understand what you are signing.

The Use Agreement section of these Copyright Guidelines gives basic, standard language you can use to draft your own permission form. This section also provides a request and use agreement checklist. Naturally, you will need to adapt the language to meet your situation. The sample agreement is provided for your general information and convenience and should not be construed as legal advice. If you have specific legal questions, you should contact the Office of General Counsel at (480) 731-8878.

Whether you use your own form or a standard form, be sure you have mechanisms in place to ensure compliance with the terms of the license. For example, if the agreement does not allow you to post copies of the work on a website, be certain neither you nor anyone in your group does so. Remember, even if you do not directly infringe on a person's copyrights, you could be liable for contributory infringement.

Use Agreements

Sample Use Agreement

[[Name of licensing entity]] ("Licensor") is the owner of the copyrights **[[if other rights are involved, specify]]** in the works **[[names and descriptions of works - see checklist below]]** authored by **[[name of author(s)]]** (the "Works"). **[[Your name]]** ("Licensee") wants to use the Works in a **[[describe proposed use/project - see checklist below]]** ("Project").

For valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree:

1) Licensor grants to Licensee the worldwide **[[or other geographical territory]]**, non-exclusive right to reproduce and distribute the Works within the Project as described in this Agreement.

2) Licensee shall pay Licensor **[[flat fee/price per copy/other arrangement]]** upon **[[timing of payment]]**;

OR

2) Based upon the educational nature of the Licensee's use, Licensor waives any fees or royalties for use of the Works solely in connection with the Project.

3) Licensor warrants that it owns the copyrights **[[or other rights described above]]** in the Works and has the authority to enter this Agreement;

OR

3) Licensor warrants that it represents **[[name or entity]]** ("Owner"), who/which is the owner of the copyrights in the Works and that Licensor has the authority to enter this Agreement on behalf of the Owner.

4) Licensee shall include the following copyright notice and/or credit line on all copies of the Works:

LICENSOR

By: _____
Name: _____
Title: _____
Date: _____

LICENSEE

By: _____:
Name: _____
Title: _____
Date: _____

Request and Use Agreement Checklist

Use this checklist to add items to the license and to more accurately and fully describe both the works you wish to copy and your intended use of the works. The more thorough your descriptions, the faster your request is likely to be processed.

Works to be used:

___ Author/Photographer/Artist

___ Title

___ Name of publication where found (if applicable, ISSN number, ISBN number, catalog number, volume, issue, date, URL if a website)

___ Number of pages to be used

Your Project:

___ Describe general nature of your project

___ Purpose of the use (e.g. commercial/educational)

___ Where the work will appear (ex: book, article, classroom handout or lecture, journal, circular, newsletter, newspaper, magazine, website, computer program, electronic forum, audiovisual program, radio, television, etc.)

___ Will the work be published? If so, when, where, and how often? How long will the work be accessible? If the work is strictly for classroom purposes, but you believe the fair use requirements do not apply, describe the educational purpose, the size of the class and the reason for the project.

___ How many copies of the work will be made? If on a website, approximately how many visitors are expected? Describe any protections you will have in place against free copying of the work (e.g. user name and password protection? Watermarking? Copying technologically prohibited?). You should not post a copy of the works on your website unless the licensor specifically allows it.

___ Do you seek permission for the current edition of the project, future projects, English language/foreign language editions, in "all media now known or hereafter invented," in promotional materials used in connection with the project, for derivative works of your project (e.g. tconverting it from a text version to a digital version)?

___ Will the project generate income/fees and if so, how much? Is the money from the copies or from general admission or other means?

Library Policies

Copies for Use by Others

Generally, it is not an infringement of copyright for a library to make one copy of a work³ and distribute it if:

1. the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
2. the library collections are open to the public or are available to persons not affiliated with the library who are doing specialized research; and
3. the reproduction or distribution includes the work's copyright notice or, if the original work does not contain a copyright notice, the library includes a legend warning the user that the work may be protected by copyright.

17 U.S.C. § 108

Copying Articles and Small Excerpts

³ Except where noted, the following rules apply to printed materials but generally do not apply to musical works, motion pictures or pictorial, graphic or sculptural works. They also do not apply to audiovisual works other than an audiovisual work dealing with the news, which are given special consideration. However, fair use considerations still apply to these types of works.

Generally, it is not an infringement of copyright for a library to copy one article or contribution to a copyrighted collection or periodical or a small part of another copyrighted work if:

1. the copy becomes the property of the user who makes the request and the library has no notice that the copy will be used for any purpose other than private study, scholarship or research; and
2. the library prominently displays on its order form and at the place where orders are accepted an appropriate warning.
17 U. S. C. § 108(d)

Copyright regulations provide the following warning, which should be listed verbatim:

**NOTICE
WARNING CONCERNING COPYRIGHT RESTRICTIONS**

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, UNITED STATES CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. UNDER CERTAIN CONDITIONS SPECIFIED IN THE LAW, LIBRARIES AND ARCHIVES ARE AUTHORIZED TO FURNISH A PHOTOCOPY OR OTHER REPRODUCTION. ONE OF THESE SPECIFIED CONDITIONS IS THAT THE PHOTOCOPY OR REPRODUCTION NOT BE "USED FOR ANY PURPOSE OTHER THAN PRIVATE STUDY, SCHOLARSHIP, OR RESEARCH." IF A USER MAKES A REQUEST FOR, OR LATER USES, A PHOTOCOPY OR REPRODUCTION FOR PURPOSES IN EXCESS OF "FAIR USE," THAT USER MAY BE LIABLE FOR COPYRIGHT INFRINGEMENT. THIS INSTITUTION RESERVES THE RIGHT TO REFUSE TO ACCEPT A COPYING ORDER IF, IN ITS JUDGMENT, FULFILLMENT OF THE ORDER WOULD INVOLVE VIOLATION OF COPYRIGHT LAW⁴.

37 C.F.R. § 201.14.

Copying Out-of-Print Works

The library may reproduce and distribute an entire work or a substantial part of a work from its collection if the library reasonably investigates the availability of the work and determines that a copy of the work cannot be obtained at a fair price and:

1. the copy becomes the property of the user who makes the request and the library has no notice that the copy will be used for any purpose other than private study, scholarship or research; and
2. the library prominently displays on its order form and at the place where orders are accepted the warning listed above.

A "reasonable" investigation should include use of commonly known trade sources and contact with the publisher, copyright owner(s) or their authorized reproducing services. 17 U.S.C. § 108(e).

Multiple Copies

⁴ The warning must be printed on heavy paper or another durable material in at least 18 point type. It must be clearly visible, legible and comprehensible to a casual observer in the immediate vicinity of the place where orders are taken. The warning must also appear on the actual order form. It can be placed on the front side of the form or immediately adjacent to the signature line. The size cannot be smaller than 8 points, but should be in the same type size used throughout the form and it must be clearly legible, comprehensible and readily apparent to a casual reader of the form.

The library can reproduce and distribute the same material on isolated and unrelated occasions so long as the library is not aware, or does not have substantial reason to believe that, it is engaging in the concerted reproduction or distribution of multiple copies of the same material.

Interlibrary Loans

The issue of interlibrary loans is fairly complex and goes beyond the scope of these guidelines. We will note, however, that libraries are free to participate in interlibrary loan programs so long as the arrangements do not have the purpose and effect that the receiving library substitutes the loans for purchasing copies or subscriptions of the work. 17 U.S.C. § 108(g)(2). To help interpret this language, the National Commission on New Technological Uses of Copyrighted Works (CONTU) suggested the interpretation which Congress included in its conference report on the matter. Though the guidelines are not law, they are considered to be a workable and fair interpretation of the intent of § 108(g)(2).

These guidelines are intended to provide guidance in the application of section 108 to the most frequently encountered interlibrary case: a library's obtaining from another library, in lieu of interlibrary loan, copies of articles from relatively recent issues of periodicals - those published within five years prior to the date of the request. The guidelines do not specify what aggregate quantity of copies of an article or articles published in a periodical, the issue date of which is more than five years prior to the date when the request for the copy thereof is made, constitutes a substitute for a subscription to such periodical. The meaning of the proviso to subsection 108(g)(2) in such case is left to future interpretation.

The point has been made that the present practice on interlibrary loans and use of photocopies in lieu of loans, may be supplemented or even largely replaced by a system in which one or more agencies or institutions, public or private, exist for the specific purpose of providing a central source for photocopies. Of course, these guidelines would not apply to such a situation.

GUIDELINES FOR THE PROVISION OF SUBSECTION 108(G)(2)

1. As used in the proviso of subsection 108(g)(2), the words "... such aggregate quantities as to substitute for a subscription to or purchase of such work" shall mean:

(a) with respect to any given periodical (as opposed to any given issue of a periodical), filled requests of a library or archives (a "requesting entity") within any calendar year for a total of six or more copies of an article or articles published in such periodical within five years prior to the date of the request. These guidelines specifically shall not apply, directly or indirectly, to any request of a requesting entity for a copy or copies of an article or articles published in any issue of a periodical, the publication date of which is more than five years prior to the date when the request is made. These guidelines do not define the meaning, with respect to such a request, of "... such aggregate quantities as to substitute for a subscription to [such periodical]".

(b) With respect to any other material described in subsection 108(d), (including fiction and poetry), filled requests of a requesting entity within any calendar year for a total of six or more copies or phonorecords of or from any given work (including a collective work) during the entire period when such material shall be protected by copyright.

2. In the event that a requesting entity -

(a) shall have in force or shall have entered an order for a subscription to a periodical, or

(b) has within its collection, or shall have entered an order for, a copy or phonorecord of any other copyrighted work, material from either category of which it desires to obtain by copy from another library or archives (the "supplying entity"), because the material to be copied is not reasonably available for use

by the requesting entity itself, then the fulfillment of such request shall be treated as though the requesting entity made such copy from its own collection. A library or archives may request a copy or phonorecord from a supplying entity only under those circumstances where the requesting entity would have been able, under the other provisions of section 108, to supply such copy from materials in its own collection.

3. No request for a copy or phonorecord of any material to which these guidelines apply may be fulfilled by the supplying entity unless such request is accompanied by a representation by the requesting entity that the request was made in conformity with these guidelines.

4. The requesting entity shall maintain records of all requests made by it for copies or phonorecords of any materials to which these guidelines apply and shall maintain records of the fulfillment of such requests, which records shall be retained until the end of the third complete calendar year after the end of the calendar year in which the respective request shall have been made.

5. As part of the review provided for in subsection 108(i), these guidelines shall be reviewed not later than five years from the effective date of this bill.

Unsupervised Copying by Others

Libraries are generally not liable for the unsupervised use of reproducing equipment located on its premises if the equipment displays a notice that the work being copied may be subject to the copyright law. 17 U.S.C. § 108. The following warning should be used:

NOTICE:

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL.

THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT.
17 U.S.C. § 108(b)

Copies of Unpublished Works for Preservation and Security or Research

A library may reproduce and distribute up to three copies of an unpublished work if the purpose is for preservation and security of the work. Three copies can also be made of the work if the copies will be deposited for research in another library if:

1. the library collections are open to the public or are available to persons not affiliated with the library who are doing specialized research;
2. the work is in the collections of the first library; and
3. copies made in digital form are not distributed in digital form or made available to the public in digital form outside the library premises.

Copies of Published Works for Replacement Purposes

A library may reproduce up to three copies of a published work if its purpose is solely to replace a copy that is damaged, deteriorating, lost or stolen or if the format in which the work currently exists has become obsolete, if:

1. after a reasonable effort, the library has determined that an unused replacement cannot be obtained at a fair price; and

2. copies made in digital form are not distributed in digital form or made available to the public in digital form outside the library premises.

"Obsolete" is further defined as meaning the machine necessary to view the copy of the work is no longer manufactured or reasonably available in the marketplace. 17 U.S.C. § 108(c).

Lending of Computer Software

MCCCD's libraries may lend computer software for temporary use by faculty and students. Any copy of a computer program lent by one of MCCCD's libraries must have affixed to the copy the following copyright warning:

NOTICE: WARNING OF COPYRIGHT RESTRICTIONS

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, UNITED STATES CODE) GOVERNS THE REPRODUCTION, DISTRIBUTION, ADAPTATION, PUBLIC PERFORMANCE, AND PUBLIC DISPLAY OF COPYRIGHTED MATERIAL. UNDER CERTAIN CONDITIONS SPECIFIED IN LAW, NONPROFIT LIBRARIES ARE AUTHORIZED TO LEND, LEASE, OR RENT COPIES OF COMPUTER PROGRAMS TO PATRONS ON A NONPROFIT BASIS AND FOR NONPROFIT PURPOSES. ANY PERSON WHO MAKES AN UNAUTHORIZED COPY OR ADAPTATION OF THE COMPUTER PROGRAM, OR REDISTRIBUTES THE LOAN COPY, OR PUBLICLY PERFORMS OR DISPLAYS THE COMPUTER PROGRAM, EXCEPT AS PERMITTED BY TITLE 17 OF THE UNITED STATES CODE, MAY BE LIABLE FOR COPYRIGHT INFRINGEMENT. THIS INSTITUTION RESERVES THE RIGHT TO REFUSE TO FULFILL A LOAN REQUEST IF, IN ITS JUDGMENT, FULFILLMENT OF THE REQUEST WOULD LEAD TO VIOLATION OF THE COPYRIGHT LAW.

The copyright warning set forth above must be affixed "to the packaging that contains the copy of the computer program, which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program." 37 CFR 201.24. In addition, the notice must be "printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program." Id.

Guidelines for Specific Media

Printed Materials

Printed materials include text from books, newspapers, magazines, periodicals, newsletters, websites, journals, personal letters, speeches and interviews. When adapting works from text - as from all sources - it is important not only to comply with the copyright laws, but also to adhere to MCCCD's plagiarism policy.

After debating the scope of fair use for educational institutions, Congress included guidelines for the copying of printed materials in the legislative history of the Copyright Act. These guidelines represent the minimum boundaries of fair use. Uses outside of these guidelines may qualify as fair use.

Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals

Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- a. A chapter from a book;
- b. An article from a periodical or newspaper;
- c. A short story, short essay, or short poem, whether or not from a collective work;
- d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- a. The copying meets the tests of brevity and spontaneity as defined below; and,
- b. Meets the cumulative effect test as defined below; and,
- c. Each copy includes a notice of copyright.

Definitions

Brevity

- (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. [Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]
- (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- (iv) "Special works": Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

- (i) The copying is at the instance and inspiration of the individual teacher.
- (ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

- (i) The copying of the material is for only one course in the school in which the copies are made.
- (ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- (iii) There shall not be more than nine instances of such multiple copying for one course during one class term. [The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

Prohibitions to Copying for Classrooms

Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:

- (a) substitute for the purchase of books, publishers' reprints or periodicals;
- (b) be directed by higher authority;
- (c) be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Course Packets

The use of course packets can be a cost-effective means of providing students with concise, current educational materials and excerpts when it is not necessary for students to read an entire work. Courts, however, have confirmed that reproducing copyrighted materials into course packets generally exceeds the scope of fair use. If you are creating a course packet, you must either verify the work you seek to copy is not protected by copyright or seek permission to use the work within the packet. Be prepared to pay a fee or royalties for using the work. The permissions process can take time, so it is generally advised that you prepare ahead and start early. Often the copy center preparing the course packet can assist you with the permissions process.

Books

Books almost always contain copyrightable materials, including text, photographs and illustrations. The selection and organization of public domain materials into a collective work may also be separately copyrightable. These works can be individually written, co-authored or written by institutional or corporate entities. An anthology may have one editor, but contain several shorter independently copyrighted works within it. It is also important to remember that the portion of the book you want to use may itself have been copied by the books' author(s) with or without permission. If so, you will need to seek out the original source of the material to secure permission for your intended use. If you are trying to find the copyright owner through the publisher, be aware that the same work may have more than one publisher depending upon the format of the work - hard back, paper back, North American rights, foreign language/country rights, reprints in digests or anthologies, etc. Electronic books - or e-books as they are known – typically originate in print form and are copyrightable. In any event, the copyrights for electronic books are treated no differently than printed books. Never store an e-book or similar electronic text on a website or other computer format accessible to others.

Periodicals

Newspapers, magazines, journals and other periodicals contain a multitude of copyrightable material - only some of which may be controlled by the publisher of the periodical. Freelance writers and photographers who contribute their works to the periodical may retain the copyrights in their works. Other works are written by employees and are works for hire owned by their employer. National syndicates may control some columns and cartoons that appear in various periodicals across the country (e.g. Dear Abby). Online periodicals also contain a multitude of copyrightable material. Online periodicals should be treated the same as print periodicals in that freelance writers or bloggers as well as photographers who contribute to online periodicals may retain the copyrights in their works.

Because the periodical's general copyright notice covers all the works within the periodical, individual copyright notices may not appear on these individual works, even if they are independently owned and controlled. If the copyright status of the work is not obvious from the article or work itself, the publisher of the periodical may have more information about its status or who to contact for more information.

Advertisement

Advertisements are generally owned by the advertiser, though it is becoming more common for an advertising agency to retain copyrights in its ad campaigns. Remember, even companies that go out of business often sell their assets, including their intellectual property rights. If you are interested in using an older advertisement, do not assume that you do not have to clear the rights solely because the company is no longer in business. Use of a company's trademarks may also require clearance and permission.

Graphs, Charts and Lists

Copyright law does not protect facts. Lists of facts, databases of pure fact and compilations of facts can be protected by copyright, though, in how they are uniquely selected, expressed and organized. Wholesale copying of lists of facts is almost definitely an infringement. If you feel certain you are using only facts and have separated them from their unique organization and expression, permission should not be required. Graphs, charts and illustrations used to supplement or enhance factual information have a higher level of originality and copyrightability and do not constitute facts. Thus, you must separately analyze whether you need permission to use such materials under general copyright law and fair use principles.

Letters

Remember, the copyrights within a work are separable from the work itself. Generally, the writer of a letter owns the copyrights within the letter, but the person to whom the letter was written owns the physical letter itself. When using works such as private letters and diaries, there is a good chance the works are unpublished. This means that even if the works are quite old, the copyrights may still exist and you need to seek permission. Private letters also raise concerns about invasion of privacy. If the letters are of a particularly intimate nature, you could be liable for making such information public.

Interviews and Speeches

Oral works such as interviews and speeches also require special consideration. Copyright laws do not protect works until they have been fixed in a tangible medium. Fixation (e.g. recording, writing down) must occur with the author's permission. Truly impromptu speeches that are not written down or recorded are not "fixed" and thus are not protected by copyright. Speeches that have been recorded with permission may require you to clear rights both with the author of the speech and with the person or entity that recorded the speech. If you purchase a copy or transcript of a television broadcast, be sure to read and follow any limitations of use that accompany the transcript.

As for interviews, the person being interviewed may claim copyrights in the interview. The conductor of the interview may also claim copyrights in the interview, perhaps in the questions asked which elicited a particular response from the interviewee, so you may need permission from both people, depending upon what portions of the interview you use. Remember, merely crediting the original source will not alleviate infringement if what you really need is permission to use the work.

Audio-Visual and Performances

Music

Copyrights exist in tangible forms of music, such as recorded music, sheet music and musical performances. For a discussion of musical performance, see the discussion of performances below. The purchase of a tangible form of music, such as a compact disc, does not provide the purchaser with rights

to reproduce the work or to use the work in another medium, such as on a website. MCCCDC prohibits the use of its resources to electronically copy or "share" copyrighted music over the Internet.

What is commonly thought of as a single, musical work - for example, a song on a CD - actually contains three separate copyrightable works: the sound recording, musical score and lyrics. You must clear rights to each copyrightable work before using it.

Certain uses of music, however, may constitute fair use. The following Congressional Guidelines, which are reprinted here, state only the minimum standards for fair use. However, other uses may constitute fair use and reference should only be made to the detailed discussion in the fair use section of the Policy.

Permissible Uses of Music for Educational Purposes

1. Emergency copying to replace purchased copies which, for any reason, are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.
2. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10 percent of the whole work. The number of copies shall not exceed one copy per pupil.
3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.
4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
5. A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

Prohibited Use of Music for Educational Purposes

1. Copying to create or replace or substitute for anthologies, compilations or collective works.
2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.
3. Copying for the purpose of performance, except as in A(1) above.
4. Copying for the purpose of substituting for the purchase of music, except as in A(1) and A(2) above.
5. Copying without inclusion of the copyright notice which appears on the printed copy.

Film

Films, including purchased or rented videos and DVDs, may not be copied or altered without the copyright owner's permission. At the time of purchase or rental, the copyright owner may specify the types of authorized uses. In most cases, purchased or rented films may not be shown outside of the home, as evidenced by labeling on the films and/or warnings displayed prior to the film.

Copyright law, however, allows educational use of a film in the course of "face-to-face" instruction, provided that the copy of the film used was lawfully made. Specifically, the Copyright Act states:

[T]he following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images is given by means of a copy that was not lawfully made under this title and that the person responsible for the performance knew or had reason to believe was not lawfully made.
17 U.S.C. § 110

Television

The live broadcast of cable or television programming in an educational setting does not violate copyright law. However, rebroadcasts of programming in an educational setting must comply with the fair use doctrine. The following Congressional Guidelines provide guidance for the use of television programming for educational purposes and should be followed by faculty and students at MCCC:

Guidelines for Off-Air Recordings of Broadcast Programming for Educational Purposes

In March 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by nonprofit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period. "School days" are school session days-not counting weekends, holidays, vacations, examination periods, and other scheduled interruptions-within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.
5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes. i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Performances

The public performance or display by faculty or students of dramatic works, such as plays and musicals, and non-dramatic works, such as musical compositions, does not constitute copyright infringement if the performance:

- occurs as part of face-to-face teaching activities; and
- takes place in the "classroom or similar place devoted to instruction."
17 U.S.C. § 110(1).

In the case of an audiovisual work, in addition to the two criteria above, the display or performance must be given by means of a copy that was lawfully made. Id.

Public performances of copyrighted works outside of the classroom may result in copyright infringement.

Performances of copyrighted works, such as music, dramatic literary works, and non-dramatic literary work at a college should be considered public performances under the Copyright Act and you should seek permission if the work being performed is copyrighted.

A non-dramatic literary or musical work may also be performed without infringement if:

- the performance is not broadcast to the public
- there is no admission charge for the performance
- the performers, promoters and organizers are not compensated
- the proceeds, after deducting the reasonable costs of production, are used for educational, religious, or charitable purposes; and
- the copyright owner does not object in writing within seven days of the performance.
17 U.S.C. §110(4).

In addition, non-dramatic literary and musical works may be transmitted to classrooms or to those with disabilities who are unable to be present in the classroom so long as the transmission is:

- "a regular part of the systematic instructional activities" of the educational institution; and
- the "performance or display is directly related and of material assistance to the teaching content of the transmission."
17 U.S.C. §110(2)

Artwork

The use of artwork involves not only works of fine art such as paintings, sculptures and photographs, but also graphics, book illustrations, animation, comic strips and clip art. The Internet has made accessing art much easier, but do not assume that just because something is easy to copy that it is legal to copy.

It is important to know that reproductions of works of art (e.g. a photograph of a painting) can also be protected by copyright - though only the original elements the reproduction adds, such as angle, lighting, etc. are protectable. If you are copying a reproduction of the original work, you may need to clear rights for both the original and the reproduction.

Works of Fine Art

Remember that just because a work is old does not mean the work is no longer copyrighted. The owners of works of fine art will often require you to follow strict copying guidelines to ensure the artistic qualities of the work and may require you to purchase a high resolution digital image. Modifications may be prohibited. It is also important to remember the copyright owner has the exclusive right to create derivative works. If you use a copyrighted work to create a new or derivative work (such as a photograph of a painting), you may be infringing the owner's copyrights.

Copyright owners often require you to include a credit line, not only providing the copyright notice and information about the artist, but also including information about where the original work is held (e.g. the name of a museum). Further, the owner is also likely to be particularly interested in your intended use. They are much more likely to agree to educational uses than commercial uses and will likely carefully guard against the work being reproduced on merchandise such as posters, greeting cards and coffee mugs without first entering an express written license.

The Copyright Act also grants artists of qualifying works of fine art special "moral" rights of integrity and attribution and in some cases, rights against destruction of the work if it is of recognized stature.

Illustrations

Illustrations in books and magazines are typically separately created and copyrighted. Do not assume that because the text of a book is in the public domain, the illustrations are as well. For example, a Shakespeare play may be in the public domain, but original illustrations created in 1982 for a reprint of the play would still have copyright protection.

Graphics

Clip art is an industry term used to designate compilations of artwork and graphics intended for others to use and copy. Some of the art is in the public domain. Other pieces are specially created for this purpose and may be copyrighted. If you are using works from a clip art compilation, be sure you know what type of work you are using and be careful to read and follow the company's terms of use.

If you are obtaining "free" clip art off of the Internet, be sure to abide by the terms of use, if any. Many sites that advertise "free" clip art place significant restrictions on the use of those images. For example, some clip art sites prohibit users from downloading the images, altering the images, or using them for commercial purposes. Others limit the number of images a user may download or provide license forms for anything more than a minimal use. Look for the "Terms of Use" or "Copyright and Use Information" pages on the site you are visiting and review those terms before using the site's clip art.

Rights of Publicity

Does the art contain images of identifiable people? If so, you must also determine whether you must get permission from the people appearing in the image. Every person has a right of publicity - the right to control the commercial exploitation of their image. A person's image can include their physical appearance, their voice or even a character they have portrayed in the media. Sometimes a copyright owner may grant you the right to reproduce an image, but expressly state that you must separately clear rights of publicity with anyone pictured.

Computer Software

United States copyright law broadly defines a "computer program" as a "set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result." 15 U.S.C. § 101. Generally, the owner of the copyright in a computer program has exclusive rights in the program, including the right to use, reproduce, and create adaptations of the programs. The use, reproduction, or creation of an adaptation of a computer program or its documentation without the permission of the copyright owner is a violation of federal copyright law and could result in monetary and/or criminal liability.

Backup Copy

Copyright law allows the purchaser of a computer program to make one backup copy of the program. This backup copy, however, may only be used if the original copy is no longer functional and must be destroyed when rights to use the original copy of the computer program cease.

Licenses

In most cases, copyright owners grant rights to use computer programs through a license, which controls the types of use that are allowed.

MCCCD has entered into many licenses with owners of computer software for use at colleges within the District. These licenses are subject to numerous restrictions. Faculty and students should not make copies of software licensed to MCCCD, including copies for educational use, unless expressly authorized. Note that MCCCD's Computing Resource Standards prohibit the use of MCCCD computing resources to infringe software, graphics, photographs or any other copyrightable material.

Open Source Software

Open source software is software whose source code is available to anyone for modification or enhancement. Source code is the written code that computer programmers use to change how a piece of software works. Open source software authors allow others to view their code, copy it, learn from it, alter it or share it. In order to use open source software, users must accept terms of a license agreement to promote collaboration and sharing. For example, open source software users cannot require a royalty or other fee for a sale. Users of open source software cannot restrict another party from giving away the software as a component of an aggregate software distribution containing programs from several different sources. An open source license allows for modifications and improvements of the open source software. If you are interested in using open source software, ensure that you understand all of the terms of the open source license agreement before using the software.

Lending of Computer Software by Libraries

MCCCD's libraries may lend computer software for temporary use by faculty and students. Any copy of a computer program lent by one of MCCCD's libraries must have affixed to the copy the following copyright warning:

NOTICE: WARNING OF COPYRIGHT RESTRICTIONS

THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17, UNITED STATES CODE) GOVERNS THE REPRODUCTION, DISTRIBUTION, ADAPTATION, PUBLIC PERFORMANCE, AND PUBLIC DISPLAY OF COPYRIGHTED MATERIAL. UNDER CERTAIN CONDITIONS SPECIFIED IN LAW, NONPROFIT LIBRARIES ARE AUTHORIZED TO LEND, LEASE, OR RENT COPIES OF COMPUTER PROGRAMS TO PATRONS ON A NONPROFIT BASIS AND FOR NONPROFIT PURPOSES. ANY PERSON WHO MAKES AN UNAUTHORIZED COPY OR ADAPTATION OF THE COMPUTER PROGRAM, OR REDISTRIBUTES THE LOAN COPY, OR PUBLICLY PERFORMS OR DISPLAYS THE COMPUTER PROGRAM, EXCEPT AS PERMITTED BY TITLE 17 OF THE UNITED STATES CODE, MAY BE LIABLE FOR COPYRIGHT INFRINGEMENT. THIS INSTITUTION RESERVES THE RIGHT TO

REFUSE TO FULFILL A LOAN REQUEST IF, IN ITS JUDGMENT, FULFILLMENT OF THE REQUEST WOULD LEAD TO VIOLATION OF THE COPYRIGHT LAW.

The copyright warning set forth above must be affixed "to the packaging that contains the copy of the computer program, which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program." 37 CFR § 201.24. In addition, the notice must be "printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program." Id.

Online Materials

The ease of posting and copying digital material has made the Internet a hotbed of copyright infringement. The popularity of downloading copyrighted music and art off the Internet has created the false impression that such activity is legal, when in fact, it often is not. Downloading copyrighted music, video, or art is prohibited, unless you have specific permission to do so.

Use of Freely-Available Materials on the Internet

Copyrightable materials are often available on the Internet without any indication of their copyrighted status, such as a copyright notice. As a result, you should assume everything you find on the Internet is copyrighted, unless otherwise labeled. This rule of thumb applies to all categories of copyrightable works, such as pictures, articles, video and music. Even popular activities, such as file swapping or copying software or pictures from the Internet may be copyright infringement and should be avoided. There may also be copyrights in screenshots.

Open Educational Resources (OER)

The term Open Educational Resources (OER) was first introduced at a conference hosted by the United Nations Educational Scientific and Cultural Organization (UNESCO) in 2000, and was promoted in the context of providing free access to educational resources on a global scale. The [MCCCD Maricopa Millions OER Project](#) defines OER as "teaching, learning, and research resources that are copyright-free or have been released under a copyright license that permits others to reuse, revise, remix and redistribute them. Examples of OER include: full courses, course modules, syllabi, lectures, homework assignments, quizzes, lab and classroom activities, pedagogical materials, games, simulations, and many more resources contained in digital media collections from around the world."

A number of search engines and websites exist to search for OER that can be used in the classroom or for online learning. Some examples are:

- [OER Commons](#) - "Find Free-to-Use Teaching and Learning Content from around the World. Organize K-12 Lessons, College Courses, and more."
- Creative Commons [DiscoverEd](#) - "Discover the Universe of Open Educational Resources".
- [Jorum](#) - "...(OER) shared and created under CC licenses by those who teach in or create content for the further and higher education communities in the UK."
- [Temoa](#) – a portal for OER.
- [University Learning = OCW+OER = Free custom search engine](#) - a meta-search engine incorporating many different OER repositories (uses Google Custom Search).
- [XPERT](#) - a resource search engine from the University of Nottingham, UK.
- [OER Dynamic Search Engine](#) - a wiki page of OER sites with search functionality.
- [JISC Digital Media](#) - advice on finding video, audio and images online, including those licensed as Creative Commons.

Creative Commons Licenses

A Creative Commons (CC) license is one of several types of open or public licenses that enable the free distribution of an otherwise copyrighted work. A CC license is used when an author wants to give people the right to share, use and build upon a work that they have created. A CC license provides an author flexibility (for example, they might choose to allow only non-commercial uses of their own work) and protects the people who use or redistribute an author's work, so they don't have to worry about copyright infringement, as long as they abide by the conditions that are specified in the license by which the author distributes the work.

There are several types of CC licenses. The licenses differ by several combinations that condition the terms of distribution. The CC licenses were initially released on December 16, 2002 by [Creative Commons](#), a U.S. non-profit corporation founded in 2001.

There are six types of CC licenses. A description of each license is described below:

1. Attribution (CC BY) – This license lets others distribute, remix, tweak, and build upon a work, even commercially, as long as the user credits the author of the original creation. This is the most accommodating license offered. This license is recommended for maximum dissemination and use of licensed materials. The credit should include the title of the work, the author, the type of work and the type of license, with a link back to the original work if available online. An example of a credit to a photograph of a wolf is “Wolf photograph by S. Smith is licensed under CC BY 2.0.”
2. Attribution-ShareAlike (CC BY-SA) – This license lets other remix, tweak, and build upon a work even for commercial purposes, as long as they credit the author and license their new creations under the identical terms. This license is often compared to so-called “[copyleft](#)” free and open source software licenses. All new works based on the author's work will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.
3. Attribution-NoDerivs (CC BY-ND) – This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to the author.
4. Attribution-NonCommercial (CC BY-NC) – This license lets others remix, tweak, and build upon a work non-commercially, and although a user's new work must also acknowledge the author and be non-commercial, the user does not have to license the derivative work under the same terms.
5. Attribution-NonCommercial-ShareAlike (CC BY-NC-SA) – This license lets others remix, tweak, and build upon a work non-commercially, as long as they credit the author and license any new creations under the identical terms.
6. Attribution-NonCommercial-NoDerivs (CC BY-NC-ND) – This license is the most restrictive of the six licenses, only allowing others to download works and share them with others as long as the user credits the author, but the user cannot change the works in any way, or use them commercially.

Posting Copyrighted Materials to MCCCDC Websites

You should only post copyrighted materials on the MCCCDC website, individual MCCCDC college sites, or any other site hosted by MCCCDC servers if you have specific, written permission from the copyright owner to post their materials on the Internet. Permission to use or copy material for other purposes may not include the right to post that same material on a website. Posting copyrighted material on a website

without permission may constitute infringement of the right to reproduce, distribute, display or perform that work. It may also make you contributorily liable if third parties access the work for infringing purposes.

In addition, faculty and other teachers should not post or otherwise provide online access to instructional materials that were required or recommended in any face-to-face MCCCDC class within the prior three years, unless permission was obtained to post the material. Also remember that student works may be copyrighted and should not be posted on the MCCCDC site without written permission from the student. If you are unsure of the propriety of posting particular material on a site, contact the Office of General Counsel at 480-731-8878.

Linking to Websites

It is common practice for websites to include links to other websites, and this is typically not a problem. However, there are some risks involved. Before hyperlinking to another website, the other site should be checked for any conditions that might apply when linking. For example, it is good practice to avoid “deep-linking” or hyperlinking directly to material and bypassing the homepage. By deep-linking, there is a danger that identification of the owner/ creator is removed from the original website. It may appear that the linked content is your own. Thus, it is advisable to link to the home page of a website, and clearly label the links with the name of the website and creator or author of the website. Also, avoid the use of frames and do not link from frames to another external site without permission. If you do link to an external website, make sure it opens in a separate frame to avoid confusion or possible misinterpretation of ownership.

Online Learning and the TEACH Act

Copyright law governs the use of copyrighted materials in the online-learning context. Accordingly, any use of copyrighted materials by MCCCDC faculty or students in the online-learning context must comply with MCCCDC's Copyright Guidelines.

The Technology Education and Copyright Harmonization (TEACH) Act was enacted in 2002 and updated the copyright law to expand the ability of certain institutions to offer distance or online learning. The TEACH Act facilitates and enables the performance and display of copyrighted materials for online education by accredited, non-profit educational institutions that meet the TEACH Act's qualifying requirements. Specifically, section 110(2) of the TEACH Act covers online education as well as face to face teaching which has an online, web-enhanced, transmitted, or broadcast component.

The TEACH Act's primary purpose is to balance the needs of online learning and educators with the rights of copyright holders. The TEACH Act may exempt from liability the transmission, including over a digital network, of a non-dramatic, or a limited portion of a dramatic, performance or display of a copyrighted work by an accredited non-profit educational institution to students officially enrolled in a course.

Expanded Rights under the TEACH Act

The expanded rights under section 110(2) of the TEACH Act include:

1. The ability to transmit performances of all non-dramatic literary or musical works and display of all works. Note that non-dramatic works exclude audiovisual works. Examples of permitted performances include a poem or short story reading. Non-dramatic works would also include all music except opera, music videos and musicals because it excludes audiovisual works. A performance means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

2. The ability to transmit reasonable and limited portions of any other performance. This includes all audiovisual works such as films and videos and any dramatic musical works excluded in number 1 above. This does not include works produced or marketed primarily for display as part of mediated instructional activity via digital network. The 'reasonable and limited portion' requirement applies to the *performance* of any type of work (other than nondramatic literary or musical works which can be performed and transmitted in their entirety). In determining what is reasonable and limited one should take into account both the nature of the market for that type of work and the pedagogical purposes of the performance.
3. The ability to transmit displays of any work in amounts comparable to a typical classroom setting. To display a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

In summary, the TEACH Act expands the range of allowed works. The TEACH Act permits the display and performance of nearly all types of works, or at least portions thereof. It also expands receiving locations of teaching or educational materials. For example, educational institutions may now reach students through distance or online education at any location. The TEACH Act allows retention of content and student access for a brief period of time, and it permits copying and storage that is incidental or necessary to the technical aspects of digital transmission systems. In order to facilitate digital transmission, the TEACH Act permits digitization of some analog works, but in most cases only if the work is not already available in digital form.

Exclusions from Coverage

Not everyone, and not every work, is covered under the TEACH Act. Section 110(2) only applies to accredited nonprofit educational institutions, such as the MCCCDC. However, even for accredited nonprofit institutions, the rights granted under the TEACH Act **do not** extend to:

1. the use of works primarily produced or marketed for in-class use in the digital distance education market, e.g., digital educational materials or works developed and marketed for use in a physical classroom;
2. works that the instructor knows or has reason to believe were not lawfully made or acquired;
3. textbooks, coursepacks and other materials typically purchased by students individually.

The third exclusion results from the definition of "mediated instructional activities," a key concept within the expanded Section 110(2) meant to limit it to the kinds of materials an instructor would actually incorporate into a face-to-face class-time lecture. In other words, the TEACH Act covers works an instructor would show or play during class, such as movie or music clips, images of artworks in an art history class, or a poetry reading. It does not cover materials an instructor may want students to study, read, listen to or watch on their own time outside of class. Instructors must rely on other rights they may have to post those materials, such as the Fair Use Statute, or they may simply be required to get permission.

Guidelines for Providing Online Access to Materials Performed or Displayed in an Online Course

The following guidelines apply to the performance or display of electronic materials that may be used for an online course or seminar.

1. Authentication

To comply with the TEACH Act's provisions, the MCCCDC must use secure authentication technology to restrict access to copyrighted materials placed within a course. When properly maintained, official courseware packages (such as Canvas) that restrict distribution of materials only to students in the

class meet the requirements of the TEACH Act. Performances and displays of copyrighted materials, other than those which the individual instructor created, should not be available on a faculty member's webpage unless:

- They have received permission from the copyright holder.
 - The MCCCDC has a license that permits such use of the work.
 - Course web pages are password protected limiting access to students in the class, and meet all of the TEACH Act requirements.
2. Current Enrollment: Access to performances and displays of copyrighted materials must be limited to students currently enrolled in the course.
 3. Time Limits: Copyrighted electronic materials should be available for a predetermined amount of time only. For example, a single class session. This can be achieved through control of the content via password or time limits applied to the internal hyperlink or folder access.
 4. Displays: A display of copyrighted works such as copies of art, graphics, photographs, etc., in an online classroom must be comparable to what would typically be displayed in a live classroom.
 5. Performances: The extent to which a copyrighted work may be performed without obtaining a license to do so depends on the type of work. The following may be performed:
 - Entire nondramatic literary and musical works.
 - Limited and reasonable portions of other works such as audiovisual works and motion pictures may be shown or performed.
 - No portion of a work produced solely for use in online instruction.
 6. Download Controls: Reasonable measures must be taken to prevent retention and/or dissemination of electronic works for longer than the prescribed time period, generally a single class session. Copyrighted images and graphics should be made available in a format with limiting printing and saving controls. Copyrighted electronic materials such as video and audio should be streamed to avoid the downloading and saving of the file.

TEACH Compliance Checklist

Consult this [MCCCDC TEACH Checklist](#) to ensure compliance with the TEACH Act for an online course (requires [Adobe Reader](#)).

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