

USING COPYRIGHTED WORKS for EDUCATION, RESEARCH, AND ADMINISTRATION at CLEVELAND COMMUNITY COLLEGE

I. Introduction

II. Copyright and Fair Use

III. Practical Assistance

A. Guidelines

B. Frequently Asked Questions

C. Blackboard and the TEACH Act

IV. Obtaining Permission

V. Additional Resources

VI. Definitions

I. Introduction

The purpose of this manual is help the faculty and staff of Cleveland Community College comply with United States copyright laws without limiting rights to fair use. The goal is to educate all personnel to respect copyright and to practice responsible use of copyrighted works. The guidelines address faculty and student uses of copyrighted print, audio, video, multimedia, and software for purposes of teaching, research, web publishing, and distance education.

The manual was developed by the Jim and Patsy Rose Library staff and approved by the College Administrative Council. It should be revised when legislative changes warrant and reviewed annually. This document is accessible by all faculty and staff of the College, and it is each employee's responsibility to become familiar with and follow these guidelines. Any questions regarding copyright compliance as it relates to educational uses of information at Cleveland Community College that are not addressed here should be referred to the Dean of Learning Resources.

Statement of Values

Cleveland Community College recognizes and respects the rights of intellectual property owners to govern the dissemination and use of their creations, and we are thus committed to fulfilling our moral and legal obligations with respect to our use of copyright-protected works. We likewise acknowledge the critical role of faculty in teaching students similar respect by modeling socially and ethically responsible behavior in the use of intellectual property. With these values in mind, we are still acutely aware of the need to find an appropriate balance, as does the law, between these rights and our need to use information quickly and efficiently in our teaching, learning and scholarship.

United States Copyright Law

Article I of the U.S. Constitution authorizes Congress to pass legislation "to promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." On the basis of the Constitution, Congress has enacted the [Copyright Act found at Title 17 of the U.S. Code](#).

Cleveland Community College Copyright Policy Statement

Section 1.31 of the Cleveland Community College Policies and Procedures Manual contains the College Policy on copyright compliance:

"All United States copyright laws must be observed by CCC students, employees, and guests. Student violations will be treated as academic misconduct. Employee violations will result in an official reprimand and/or termination of employment. Guests will immediately lose all privileges."

II. Copyright and Fair Use

As stated by Justice Sandra Day O'Connor, "The primary objective of copyright is not to reward the labor of authors, but '[t]o promote the Progress of Science and useful Arts.' To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art" (Feist Publications, Inc. v. Rural Telephone Service Co., 499 US 340, 349 (1991)).

Title 17 of the U.S. Code gives exclusive rights to the creators of "original works of authorship." This copyright protection applies to published and unpublished works, and extends to literary, dramatic, musical, artistic, and other intellectual creations. Copyright law gives to the copyright holder all rights regarding the work's reproduction in copies or recordings; the preparation of derivative copies based on the work; the distribution of copies or recordings for sale, lease, or rental; public performance, display, or broadcast. **Copyright protection is granted on the creation of the work, regardless of whether the creator applies for copyright or whether the work contains a copyright notice.**

Owning a book, manuscript, painting, or any other copy or recording does not give the possessor the copyright. Copyright for a work is not transferred with the ownership of a material object that is an embodiment of the work. In other words, just owning a book, video, or compact disc does not give the owner any rights to copy, display, perform, or distribute the work. All such rights are reserved for the copyright owner.

Copyright law protects all works that are in a tangible form. This includes:

- © Literary works
- © Musical works, along with any lyrics
- © Dramatic works, with any accompanying music
- © Pantomimes and choreographic works
- © Pictorial, graphic and sculptural works
- © Motion pictures and all other audiovisual works
- © Sound recordings
- © Architectural works, including drawings, blueprints and the final structure

If everything is copyrighted, where does that leave researchers, teachers, librarians, and students who need to use copyrighted materials in their educational pursuits? Exceptions to the copyright law are found in *U.S. Code Title 17, Section 107 - Fair Use*. Copyright law provides for the "fair use" of copyrighted material within the academic community, with restrictions.

The intent of "fair use" is to balance the rights of the creator and/or copyright holder with the needs of society. The doctrine of fair use is only intended for purposes of criticism, comment, news reporting, teaching, scholarship, and research. Before making any type of reproduction of an original work, changing the format of any work, or putting the work on a website or in an online course you must determine if the material you wish to use in your project is copyrighted. Remember, almost everything is. Works created after March 1, 1989 are not required to contain a copyright notice, so **the absence of a notice means nothing**. One helpful tool for determining copyright status is the [Copyright Slider](#).

If you determine that the item you wish to use is copyrighted you must apply the "Criteria for Determining 'Fair Use.'" Do not assume that any and all educational uses are "fair." They are not. Fair use is dependent on the individual circumstances of any given situation. There are no hard and fast rules, but these guidelines should help you decide.

Criteria for Determining “Fair Use”

- © **Purpose of the use** -- Is the use strictly for an educational purpose? Will use be in a traditional classroom environment? Is the material to be used in the same format it was purchased in? Is this the first time you have copied the material? Did you find and decide to use the material on the spur of the moment? If you can answer yes to these questions, you are probably within the guidelines for “fair use.”
- © **Nature of the copyrighted work** – Is the work fact-based? Is it out of print? This weights in favor of fair use. Is it fiction? Is it poetry? Is it consumable, as in a workbook? Is it a pattern to be used to construct something? If the answer to any of these is yes, the use is probably not “fair use.”
- © **Amount used** -- Are you copying the entire work? (One journal or magazine article is considered an entire work, by the way.) The larger the percentage of the whole that you copy, the greater the chance that you are not protected by “fair use.”
- © **Effect of the copying on the potential market for or value of the original work** -- Are you copying rather than purchasing? Has the material been marketed specifically for your needs? If so, “fair use” probably does not apply here either. In fact, this could weight more heavily against fair use than the other factors.

As you examine a project in light of the four factors of “fair use” keep in mind that all factors do not have to lean in one direction. If most factors lean in favor of fair use, the activity is allowed; if most lean against fair use then the use does fall under the fair-use exception. If this is the case you may be required to get permission from the copyright owner. To make copies that are not within “fair use” guidelines is to violate copyright law.

To assist you with the application of the factors, use the [Checklist for Fair Use](#). You should complete and retain this form each time you claim “fair use” of a copyrighted work.

After applying the Four Factors, if you have any doubt that your intended use may not be covered by the fair use exception you should seek permission from the copyright owner.

III. Practical Assistance

A. Guidelines

To assist in determining when and how you can use copyrighted materials in your teaching and research, various entities have developed guidelines. While these guidelines are not “laws” they have been crafted by representatives of and agreed on by publishers, authors, educational institutions, and the library community. Cleveland Community College employees are expected to abide by these guidelines in the use of copyrighted materials unless their documented “fair use” determination provides an exception.

[**Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals**](#)

[**Guidelines for Educational Uses of Music**](#)

[**Guidelines for Off-Air Recordings of Broadcast Programming for Educational Purposes**](#)

[Educational Fair Use Guidelines for Educational Multimedia](#)

[Code of Best Practices in Fair Use for Media Literacy Education](#)

B. Frequently Asked Questions

The textbook for my class is on backorder. Can I copy the first few chapters for my students until the book comes in?

The answer is probably yes. According to the [“Guidelines for Classroom Copying in Not-For-Profit Educational Institutions”](#) such copying can be done as long as it is for instructional purposes, is not more than 10% of the book, is only done for this situation, there is no financial benefit from the copying, and it is not done as a substitute for purchase.

If you use Blackboard, it would be permissible to scan the pages you need and post them in your course until the textbook is available. This way you can destroy the copy once the students have access to their textbook, you have not made print copies that are still in existence, and you have saved money. You could not, however, post the pages on a website.

I have a study guide that goes well with the class I am teaching. Is it permissible to make copies from it for my students?

No. If you intend to use more than 10% of the guide then the students should purchase a copy for themselves. And you can only use the copy of 10% or less for one semester.

What if the item is no longer available for purchase?

Just because an item is no longer available for purchase does not mean the copyright has expired. If you must use the item with your students then you will need to get permission from the copyright owner. In cases like this it might be simpler to find a new study guide that can be purchased by your students.

A book I want to use is out of print but a colleague has a copy of it. Is it permissible to make copies of it?

Not necessarily, as there are sources that produce and market out of print material. Sometimes an out of print item might still be available. Out of print does not mean out of copyright protection. You should make every reasonable effort to obtain a copy.

Can I make copies of print material for my own research? Yes, but you must adhere to the guidelines stated in the [“Guidelines for Classroom Copying in Not-For-Profit Educational Institutions”](#)

Single copies for personal use are limited to

- © a chapter from a book
- © an article from a periodical or newspaper
- © a short story, short essay, or short poem, whether or not from a collective work
- © a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

You may not publish, in any format, anything quoted from a copyrighted source without permission of the copyright holder. This includes web publishing as well.

Can I make multiple copies of printed material for distribution to my students? In some cases this is acceptable. Follow the “fair use” guidelines above. “Fair use” may apply if your

decision to distribute the copies is spontaneous. For example, you find a journal article that would complement your lecture and benefit your students, but your class meets tomorrow and there is no time to obtain permission from the copyright owner. In this case, you may make and distribute copies, as long as you follow these guidelines:

- © Distribute only one copy for each student in the class.
- © Do not distribute the same photocopied material again in another semester.
- © Include a [copyright notice](#) on the first page of the portion of material photocopied.
- © Do not assess any fee beyond the actual cost of the photocopying to your students.

Keep in mind that many print articles are now available online. If there is a copy of the material in one of the Library's online subscription databases, you can refer your students to the article or give them a link to it. This avoids any copyright violations and saves on printing costs.

Can I place multiple copies of an article on reserve for my students? In order to place multiple copies of an article on reserve, the instructor's material and circumstances must fall within the following guidelines:

- © It should be a reasonable amount of material in relation to the total amount of material assigned for that course for that semester and with consideration of the nature of the course, the subject matter and the level of the material.
- © The number of copies should be reasonable considering the number of students enrolled in the course, the difficulty and timing of assignments, and the number of other courses that have the identical material assigned.
- © The material must contain a [copyright notice](#).
- © The photocopying must not deter the market for the material.
- © In general, the library should own at least one copy of the work

Can I make copies of the same article for my students every semester since it supplements a certain portion of what I teach every semester?

No. You can make and distribute a copy of something that you find at the last moment, but you must get permission from the copyright owner for making copies for any successive semester.

What if I don't make copies of an article but post the article in my Blackboard course every semester?

This would still be a copyright violation. You need to get permission for use beyond the first semester. The best way is to provide a link for an online version of the article if this is available. If you are not sure, check with the Library.

Is it a copyright violation to place a work in the classroom or on reserve and request that students make copies?

Yes, this is known as "top down" copying and is prohibited. Requiring students to make copies is the same as making the copies yourself in the copyright world. You need to seek permission to make the copies, have each student purchase the work (not the same as purchase the copies), or place the work on reserve and have the students use it in the Library. Be sure to check with the Library about appropriate reserve procedures to avoid copyright violations. Works placed on reserve must be legally acquired copies owned by the Library or the College.

If I find something on the Internet that does not have a copyright statement, is it safe to assume that I can make copies of it for my students?

There does not have to be a copyright statement to secure copyright. The act of publishing in any form insures copyright protection. You should assume that everything is copyrighted unless you see a statement to the contrary. In this case the best way is to use the internet to share the material in class or to create a link in your Blackboard course site.

Can I post a copy of a magazine or journal article on my website? Just because it is technologically possible to do something does not make it legal. While the technology exists to scan a printed work, save it as a file, and post it on a web page, this is a copyright violation. You must obtain written permission from the copyright holder before publishing – this includes posting on a website or into an email -- anything that is not your original work.

What about posting material electronically for my online students?

Fair use does allow for electronic posting of copyrighted materials for online classes, with these restrictions:

- © The instructor must post the material in such a way that only those students currently enrolled in the class can access it. For example, if only students who can log into your Blackboard course have access, then you are probably not violating copyright.
- © The amount of material posted must be reasonable in relation to the entire document. In other words, you cannot copy and post entire chapters from a textbook.
- © The materials must be erased at the end of the semester.
- © Each reserve posting must carry the [copyright notice](#).
- © Copyright clearance must be obtained in order to use the material in any subsequent semester.

Can I convert my videos to DVD format?

No, it is a copyright violation to change an item from one format to another. This is only allowed if the original format is obsolete and equipment to play it is not available for purchase. (An example of this would be ¾ inch videocassettes. It is acceptable to transfer material from ¾ inch to VHS.) While VHS appears to be a dying format VCR players are still available, so you can't transfer VHS into another format.

Can I show a rented movie to my class?

Yes, as long as it is for educational purposes related to the curriculum and the lesson at hand. Also, be sure that this use is not prohibited by the rental provider.

Can I make a recording to change a work from one format to another? In most cases, the answer is no. It is also a copyright violation to make a recording by narrating a print work onto tape. Even though the medium is different, the material is still copyrighted.

Can I record a television show program and show it to my class? The answer is maybe. You can record from channels that you would be able to receive with an antenna, but not from cable or satellite. Any such program that you record for educational use can be used only once with each class, must be used within ten days of recording, and must be erased after 45 days. And since "fair use" guidelines apply here, the classroom use must be directly related to course objectives -- not for entertainment.

In order to record and use cable or satellite delivered programming, you must have permission from the copyright owner or some other documentation that the use is permitted. There is no "fair use" exemption to record and show anything broadcast on a cable/satellite only channel. However, many of these channels -- such as Discovery, Biography, and History -- give program-by-program permission for copying and retention for one or two years. Information about specific programs that can be recorded for classroom use is available at www.ciconline.org/oncable.

But I can make a copy of an audio or videocassette to keep as a backup, right? Wrong. It is also a mistake to think that you can make a copy of anything for backup purposes. You can only do this if the rights were granted with the original purchase, and this is not the usual case.

There are a number of videos and DVDs that I used in the classroom, but now I teach these classes online through Blackboard. How do I get his material to my students? The TEACH Act addresses how these materials can be used.

For additional copyright questions and answers see "[Uses in the Traditional Face-to-Face Classroom](#)" and "[Uses in the Online Classroom / Course Management System](#)"

C. Blackboard and the TEACH Act

The "Fair Use" is not just available for classroom teaching materials. This exemption can also be used for the display of materials in online instruction. To see how the four factors can be applied to materials posted in a course management system such as Blackboard look at the examples provided by the Copyright Management Center at IUPUI: [Common Scenarios of Fair Use Issues: Posting Materials on Course Management Systems](#).

For additional guidance with the online use of copyrighted materials in online courses you can find very good information in the Association of Research Libraries' "[Know Your Copy Rights](#)" online materials.

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 revises Section 110 of the Copyright Act to allow the use of copyrighted materials – particularly audio-visuals – in online education on the same terms as such materials are used in traditional face-to-face teaching. This allows you to use the videos and DVDs that you would normally show in a classroom with your online students. The TEACH Act exemption applies to any copyrighted work unless it was produced or marketed primarily for performance or display as part of "mediated instructional activities." In other words, you cannot include materials that were created specifically for use in online classes unless you purchase the rights.

In order to use the TEACH Act exemption there are specific requirements that must be satisfied by the institution and the course. The material used must be

- © lawfully acquired
- © integral to the curriculum and the lesson at hand
- © the same amount that would be used in the physical classroom
- © limited to only that portion necessary
- © available to enrolled students only under instructor supervision
- © material not normally purchased by students
- © clearly labeled with the [copyright notice](#)

Some materials – specifically workbooks, worksheets, and other consumable materials -- can never be posted on a course site, even when the site is password protected, as with Blackboard.

Because it is easier to violate copyright laws with digital materials, Congress has stipulated that digital works must be more stringently controlled. Thus, to use the TEACH Act exemption, the College is required to inform our educational community about copyright law and employ technology to limit the infringement possibilities.

Keep in mind that the TEACH Act does not replace "fair use." If you determine that the use of a work is a "fair use" based on the four factors, then you do not have to meet the requirements of the TEACH Act.

To request the conversion of VHS or DVD materials for use in an online course refer to the directions on the [Video Streaming Request](#).

IV. Obtaining Permission

If you determine that the work you want to use is protected by copyright and that your project cannot be judged as “fair use” you are required to obtain permission from the copyright holder in order to use the work. This three step process can take some time so it is important to begin well before you will need to use the work.

Step 1. Identify the copyright owner(s).

- © Start by examining the work to locate a copyright notice (“copyright by . . . , ©”) and/or the author or publisher. Keep in mind that this method is not always accurate as copyright ownership is sometimes transferred after publication. Also, don’t forget that the absence of a notice does not mean the item is not protected by copyright. For additional assistance try [U.S Copyright Office’s Circular 3: Copyright Notice](#).

- © An internet search for a title, author, publisher, segment of text, lyrics, etc. by help you determine the copyright owner. There are also online organizations that can assist with this, and some of them will also contact the copyright owner or give permission on their behalf. For additional assistance try [Copyright Management Center: Collective Rights Organizations](#).

- © There is a record of all submitted copyright registrations at the U.S. Copyright Office. While this can be useful keep in mind that not all owners do not complete the registration process and not all transfers are recorded. You can search these records at [Copyright Records](#) and [Obtaining Access](#).

Step 2. Contact the copyright owner(s).

- © Once you have determined the copyright owner you should contact them for permission to use the work. For print items, the best place to begin is the [Copyright Clearance Center](#).

- © You can also send a letter directly to the copyright owner requesting permission for use of their work in your project. This written communication should include the following information: author name, title, edition and volume number of book or journal, numbers of exact pages and illustrations, publication year, publisher name, ISBN number for books, ISSN number for journals, College name, course name and number, semester and year in which material will be used, number of photocopies to be reproduced, how material will be reproduced (i.e., photocopying, scanning), instructor name, and contact information. You can use the [Permission Letter Template](#) to guide you in crafting this letter.

- © Or, you can check the publisher’s website for procedures for contacting the copyright owner or the permissions department.

- © Ask the Rose Library for assistance.

Step 3. Secure and document permission

Collective rights services, such as the Copyright Clearance Center, can grant permission for the use of many works. This is the method preferred by many copyright holders who do not wish to be contacted directly and so use the service as their agent. Be aware that while some permissions are granted while others are not, and there is often a fee. A requisition for copyright fees, based on a quote from the copyright holder or agent, should be submitted though

established College channels before any agreement is made. If you are not sure about this process contact the Library.

If you request permission using a letter to the copyright owner do not assume permission has been granted. If you do not get a response the answer is no.

Keep detailed records of all permissions and correspondences related to your project. This is important because you may need to refer to this later to determine your rights, it is proof that you have permission, and you may need to obtain permission from the same copyright holder or service in the future. Information you need to keep includes the citation and name of the work, the author or creator, the type of media, the type of use and or number of copies permitted, the copyright owner and contact person, contact information, the dates permission was requested and granted, any fees required and payment schedule, and the expiration of permission.

V. Additional Resources

Selected Bibliography

These items were used in the preparation of this document and are available in the Jim and Patsy Rose Library.

Butler, Rebecca. *Copyright for Teachers and Librarians*. New York: Neal-Schuman, 2004.

Hoffman, Gretchen McCord. *Copyright in Cyberspace 2*. New York: Neal-Schuman, 2005.

Russell, Carrie. *Complete Copyright: An Everyday Guide for Librarians*. n.p.: ALA, 2004.

Simpson, Carol. *Copyright Catechism: Practical Answers to Everyday School Dilemmas*. Worthington, OH: Linworth, 2005.

---. *Copyright for Schools: A Practical Guide*. 4th ed. Worthington, OH: Linworth, 2005.

Useful websites

The Copyright Act is Title 17 of the U.S. Code - <http://lcweb.loc.gov/copyright/title17>

Reproduction of Copyrighted Works by Educators and Librarians (U.S. Copyright Office Circular 21) - <http://www.copyright.gov/circs/circ21.pdf>

Copyright Advisory Network - http://librarycopyright.net/wordpress/?page_id=10#locating

Stanford University's Summaries of Fair Use Cases - http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/9-c.html

Copyright Office Basics - <http://lcweb.loc.gov/copyright/circs/circ1.html>

Fair Use in the Electronic Age - http://www.arl.org/pp/ppcopyright/copyresources/fair_use_electronic.shtml

Digital Millennium Copyright Act - <http://www.copyright.gov/legislation/dmca.pdf>

Center for the Study of the Public Domain - <http://www.law.duke.edu/pd/>

Center for Intellectual Property - <http://www.umuc.edu/distance/odell/cip/cip.shtml>

Copyright Slider - <http://librarycopyright.net/digitalslider/>

Software and Database License Agreement Checklist -
<http://www.utsystem.edu/OGC/IntellectualProperty/dbckfrm1.htm>

Crash Course - <http://www4.law.cornell.edu/uscode/17/>

The Cost of Copyright Confusion for Media Literacy -
http://www.centerforsocialmedia.org/files/pdf/Final_CSM_copyright_report.pdf

Copyright Law in the Digital Age (University of Texas) -
http://www.utsystem.edu/OGC/IntellectualProperty/lib_fac.htm

VI. Definitions

Copyright notice – Most resources have a copyright notice. This notice should be copied and attached to any copies made of the resource. If there is no notice on the original then the notice used on the copy should state that the material might be protected by copyright, i.e. “Notice: This material may be protected by copyright law (Title 17 U.S. Code).” The library has a stamp with the appropriate wording to identify copyrighted material if you cannot find the copyright notice on the original. The original or a similar notice should also be included conspicuously in each blackboard course.