

Library Copyright Guidelines

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INTRODUCTION

TBCC Library supports compliance with copyright law for the protection of the institution and of employees as both creators and users of copyright protected works. The College requires TBCC faculty, staff and students to observe federal law regarding the use of copyright protected materials.

The issue of P2P file sharing is receiving increasing attention in the U.S. and around the world. P2P file sharing is not itself illegal. However, it is often used for unauthorized downloading and uploading of copyright-protected material such as music, video games, computer software and photographs. Several courts have determined that substantial P2P file sharing of copyright-protected works generally does not fall within the fair use defense.

Students who engage in substantial P2P file sharing of copyright-protected materials may be subject to serious liability. Colleges are under no obligation to accept responsibility for, or to help defend, the activities of students in illegal file sharing. They can be found in TBCC's Administrative Rule B007 (www.tbcc.cc.or.us/images/documents/admin_rules.pdf). Reproducing, republishing or redistributing the work of a copyright holder without permission, you may be violating or infringing on his or her rights under the Copyright Act.

If the copyright holder has registered the work with the U.S. Copyright Office prior to the infringement, the copyright holder may sue for compensation. Court-ordered compensation may include damages such as lost profits from the infringing activity or statutory damages ranging from \$250 to \$150,000 plus attorney fees for each infringing copy. Even higher damages may be awarded if the court feels that the infringement was committed "willfully."

COPYRIGHT

The grant of copyright bestows several rights upon the creator of a work (or the individual having a legal interest in the work) that permit the copyright holder to control the use of the protected material.

These rights are known as "exclusive rights." This means that an individual or institution cannot intrude on those rights unless their use falls into one of the prescribed exceptions, or unless they receive permission from the copyright holder. The exclusive rights bestowed to the copyright holder are as follows.

1. The right to reproduce the copyrighted work.

2. The right to prepare derivatives or adaptations of the work.
3. The right to distribute copies of the work to the public by sale, rental, lease or lending.
4. If applicable, the right to perform the work publicly.
5. If applicable, the right to display the work publicly.
6. If applicable, the right to perform the work publicly by means of a digital audio transmission.

The unauthorized use of one of the exclusive rights of the copyright owner constitutes infringement.

COPYRIGHT PERMISSION EXEMPTIONS

Permission must be obtained from the copyright owner to copy, distribute, display or perform a copyrighted work unless its usage falls in one of the following exemptions.

FAIR USE

To ensure a balance of the rights of copyright owners and the public interest, the law allows you to use copyrighted works without permission – regardless of medium – when evaluation of the circumstances suggests the use is fair.

This “fair use” provision of copyright law does not provide hard and fast rules to tell you whether a use qualifies as fair. Instead, the unique facts regarding a use lead you to a reasoned conclusion.

There are four fair use factors that need to be considered in any fair use assessment. Examining the four fair use factors in some detail is helpful in assessing whether a particular use would be considered fair use by a court.

FAIR USE FACTORS

1. **PURPOSE AND CHARACTER:** If your use is for teaching at a nonprofit educational institution, this is a factor favoring fair use. The scale tips further in favor of fair use if access is restricted to your students. However, nonprofit or noncommercial status does not guarantee application of fair use.
2. **NATURE OF COPYRIGHTED WORK:** Is the work fact-based, published or out-of-print? These factors weight in favor of fair use. The more creative the work, the stronger the copyright protection.
3. **AMOUNT USED:** Using a small portion of a whole work would weigh toward fairness. Sometimes it may be fair to use an entire work (such as an image) if it is needed for your instructional purpose.
4. **MARKET EFFECT:** A use is more likely to be fair if it does not harm the potential market for or value of the copyrighted work. Harm towards potential market for or value of can weigh more heavily against fair use than the other factors.
“To negate fair use,” the Supreme Court has said that one need only to show that if the challenged use “should become widespread, it would adversely affect the potential market for the copyrighted work.”

Consider each of these factors, but all of them do not have to be favorable to make your use a fair one. When the factors in the aggregate weigh toward fairness, your use is better justified. When the factors tip the scales in the other direction, your need to obtain permission from the copyright holder increases.

FACE-TO-FACE TEACHING EXEMPTION

The Copyright Act permits the performance or display of copyrighted materials during face-to-face teaching activities without getting the author's permission. This exemption does not permit copying or distributing a work, only displaying or performing it within the confines of the face-to-face teaching environment.

TEACH ACT

The Technology, Education, and Copyright Harmonization (TEACH) Act amended the copyright law to extend the face-to-face teaching exemption to online provided that the following conditions are met.

1. The online instruction is mediated by an instructor.
2. The transmission of the material is intended for receipt by students enrolled in the course.
3. Measures have been employed to prevent "retention of the work in accessible form by recipients of the transmission... for longer than the class session."
4. Measures are in place that limit the transmissions of the material to students enrolled in the particular course and precludes unauthorized student retention and/or downstream redistribution "to the extent technologically feasible."
5. These parameters do not allow for entire hard copy textbooks to be digitized or materials that are produced by the copyright owner for online instructional sales.
6. Digitizing of analog works is permitted only if the work is not already available in digital form.

These benefits are available to educators who comply with the many and diverse requirements of the copyright law.

LICENSING AND LINKING

In many cases, you can eliminate the need for permission or fee by providing a link to the work online instead of making copies of it. In some instances the library may have paid for a subscription license that entitles you and your students online access. If the library has not purchased access, the work may be available in an open archive, the author's homepage or an open access journal. Providing a link to a legitimate website does not infringe on copyright.

OBTAINING PERMISSION TO USE COPYRIGHTED MATERIALS

When permission is required for use of copyrighted materials, it is necessary to seek permission from the copyright holder. The American Association of Publishers suggests that the following information be included in a permission request to expedite the procedure.

1. The title, author and/or editor, and edition of materials to be duplicated.

2. If a photocopy, the number of copies to be made.
3. A description of the exact material to be used, giving amount, page numbers or chapters.
4. The purpose of the use.
5. Whether the material is to be sold.
6. Type of reprint (ditto, photocopy, digital image, offset, typeset).

The request should be sent, together with a self-addressed stamped envelope, to the permissions department of the publisher, or where appropriate the copyright holder.

The process of granting permission requires time for the publisher to check the status of the copyright and evaluate the nature of the request. It is advisable to allow enough lead-time to obtain permission before the materials are needed. In some instances, the publishers may assess a fee for the permission.

PUBLIC DOMAIN

Works in the public domain are not protected by copyright and can be used freely. Examples of works in the public domain include:

1. Works published by the Federal government or created by its employees as part of their job.
This does not apply to most works by federal grant recipients or contractors or to works of state or local governments.
2. Databases of facts.
3. All works published in the US before 1923.