

COPYRIGHT GUIDELINES

ADMINISTRATIVE RULE NUMBER: D020

LAST APPROVED: July 8, 2014, May 28, 2019

RELATED TO POLICY SERIES NUMBER:

INTRODUCTION: D020.1

TBCC Library supports compliance with Federal copyright law for the protection of the institution, copyright holders, students, and 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.

COPYRIGHT: D020.2

A work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device. The grant of copyright is automatic and bestows several rights upon the creator/s of a work (or the individual having a legal interest in the work). Those rights 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.

- A. The right to reproduce the copyrighted work.
- B. The right to prepare derivatives or adaptations of the work.
- C. The right to distribute copies of the work to the public by sale, rental, lease or lending.
- D. If applicable, the right to perform the work publicly.
- E. If applicable, the right to display the work publicly.
- F. 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: D020.3

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. (Note: the creator of a work is not always the copyright holder)

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FAIR USE: D020.4

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: D020.5

- A. **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.
- B. **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.
- C. **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.
- D. **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 not all of them have to be favorable to make your use a fair one. When the factors taken together 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. If you are unsure about whether or not you have a case for fair use we strongly suggest filling out a [Fair Use Checklist](#), so that if there is ever a copyright claim, you can document your reasoning behind using a work.

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FACE-TO-FACE TEACHING EXEMPTION: D020.6

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: D020.7

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

- A. An instructor mediates the online instruction.
- B. The transmission of the material is intended only for receipt by students enrolled in the course.
- C. Measures have been employed to prevent "retention of the work in accessible form by recipients of the transmission... for longer than the class session."
- D. 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."
- E. 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.
- F. Digitizing of analog works is permitted only if the work is not already available in digital form.

LICENSING AND LINKING: D020.8

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 student's 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. Linking is usually preferable to

OBTAINING PERMISSION TO USE COPYRIGHTED MATERIALS: D020.9

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

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that the following information be included in a permission request to expedite the procedure:

- A. The title, author and/or editor, and edition of materials to be duplicated.
- B. If a photocopy, the number of copies to be made.
- C. A description of the exact material to be used, giving amount, page numbers or chapters.
- D. The purpose of the use.
- E. Whether or not the material is to be sold.
- F. 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.

There are also copyright clearinghouse companies out there such as Xanadu who will, for a fee, attempt to gain permissions to use copyrighted materials. The TBCC Library can also assist with gaining permissions if needed.

PUBLIC DOMAIN: D020.10

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

- A. 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.
- B. Databases of facts.
- C. All works published in the US before 1924.