

# Three Rivers Community College

## Copyright, Fair Use, Creative Commons Guidelines

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### I. Explanation of Document and Need

There are many resources available that can help each individual make an informed decision regarding when the use of books, articles, news reports, poems, photographs, parodies, videos, movies, animations, etc. is fair but it can be burdensome to collect these resources which may not altogether apply to the individual needs of faculty members and staff. Such resources may make the issue less clear than when an individual began the search.

The intent of this document is to provide information to help in making more informed choices when selecting materials protected by copyrights for use in a classroom, whether traditional, web-enhanced, hybrid or online.

### II. Justifications for the Use of Copyrighted Materials

Research indicates that faculty can better meet the diverse learning styles of their students if their classes integrate not only the ideas of others but also the myriad materials available

including print, images, other multimedia, software items. Incorporating additional materials will make individual class sessions more dynamic and a greater learning experience for all students.

A significant component of Three Rivers Community College's mission is to meet "the diverse educational needs of the community by creating an environment that stimulates learning." Thus, the college supports the individual efforts of full time and adjunct faculty to expose students to many of the world's ideas and viewpoints through the use of materials created by others. Recognizing that responsiveness to student learning styles means creating a more stimulating classroom environment, the college encourages the use of topical, current multimedia and online items. However, all faculty members should understand the limitations imposed by law and lack of law regarding usage of another's intellectual property.

### **III. Intellectual Property**

Intellectual property refers to creative items that are the product of a particular person's mind or the collaborative efforts of a group. Such items can include written works, artistic and musical compositions, musical and other performances, inventions and software. Intellectual property, depending on its format, is protected by various laws and regulations. *Patent law* protects the intellectual property of inventors. *Trademark and trade secret regulations* and law protect the intellectual property of businesses. *Copyright law* protects the intellectual property of writers, artists, musicians, movie makers, software engineers and designers, and photographers. The majority of multimedia items that can enhance classroom learning are protected by copyright.

### **IV. Community College System Policy (Ownership of College Work)**

In order to foster the most collaborative environment which best serves all community college students, the current Connecticut Community College System's policy is that items created by community college employees are work-for-hire and the intellectual property of the System. This is interpreted to include all formats of intellectual property in all forms of classroom environments: on-campus solely, web-enhanced, hybrid, online with campus requirements, and online. This policy is subject to change based on collective bargaining negotiations. Posting of materials to a private web server or site, social media site, or other system outside the designated LMS does not change the System's ownership when the work was created for the conduct of the contracted class(es). Instructors should contact their individual unions for the most up-to-date System agreement.

In practice, the System has allowed that materials created for the conduct of classes is the joint property of the colleges and the individual(s) who create them. This would allow both the colleges and the System to continue to use them after the employee has conducted the class and potentially after the instructor is no longer employed by the colleges.

It should be noted that students have no employee relationship with the colleges and work created for the class by students is always the property of the students.

## V. Copyright

Copyright law is clear. The owners of printed and other kinds of work have five kinds of rights:

- a. The right to reproduce the work,
- b. The right to make derivative works,
- c. The right to distribute copies,
- d. The right to perform the work publicly, and
- e. The right to display the work.

### Length of Borrowed Work

The length of copyright protection is different based on the whether or not the work was created for hire. Copyright law protects the work of an individual for as much as 70 years after the death of that individual. If a work is the product of a contract, different protections apply: 120 years from the date of creation or 95 years after the first publication, whichever is shorter. Beyond these year limits, the work has passed into the public domain, meaning it can be freely used and distributed. Such works can include music (*The Stars and Stripes Forever* - John Philip Sousa) and classic works of literature (*The Adventures of Tom Sawyer* - Mark Twain) among others.

### Faculty – Get Permission, or License

In order to use copyrighted materials in a classroom, faculty should have permission from the original creator of the work or the person who owns the rights to the work. The same applies to online, hybrid and web-enhanced classes when posting materials to a course management system. The same applies to posting content on a web site. In the case of a magazine article, instructors should obtain the magazine company's permission. To use a chapter from a book faculty should have the copyright holder's permission. If it is a music file that faculty members wish to play, the music distribution company should give permission. If faculty wish to perform a play, the author or other rights holder should be consulted. If faculty wish to install a particular software package, the software company should grant permission. (In general, companies will want some form of payment and individual rights holders may allow limited usage as a result of simple requests.)

Rights to use another's work is generally implicit when the work is purchased or licensed but that may not apply to multiple users or to the distribution of the work to others

Even if a printed work such as a book is no longer in print it does not mean that it is not copyrighted and it does not mean that no one or no publishing company holds the rights.

## VI. Fair Use

If copyright law sounds very restrictive, it is meant to be so. It is law which protects rights holders and gives them an incentive to produce and distribute creative works to society. However, if it is so restrictive it seems antithetical to creating the types of classroom

environments necessary to accomplish the college's mission, the concept of "fair use" changes the equation. The term "*educational copyright*" has been used but this term has no bearing in copyright law. What is really meant is "*fair use*" policy. The concept of fair use allows faculty members to use copyrighted works in on-campus, web-enhanced, hybrid and online classrooms *without obtaining permission from the publishing company, author, speaker, etc.* Fair use is an exclusion to copyright but it does not negate the rights of the original creator. In order for fair usage to be considered "fair" it must pass a test in four key areas.

## VII. The Fair Use Test (the Four Factor Test)

Fair use is based on four key factors (section 107 of the Copyright Act, <http://www.copyright.gov/fls/fl102.html>):

- a. -how the work is used such as nonprofit educational versus commercial,
- b. -the nature of the work,
- c. -how much of the work is used,
- d. -and the effect on the marketing of the original work.

### How the Work Is Used

Three Rivers Community College is a non profit institution and most usages for classroom purposes would pass the test in this area but all four factors must be considered. According to the Copyright Clearinghouse Center in examining the character of the use, courts have favored the following uses:

- a. The materials have an educational purpose and are NOT capriciously included.
- b. The students are NOT charged a fee for the materials.

### The Nature of the Work

The nature of the work plays an important part in determining if classroom usage is fair. Facts, statistics, and ideas are not copyrightable so faculty usage of them from sources that are protected by copyright may be fair. For example, mentioning that the President visited a European country last week and citing the *National Newspaper* as the source is fair because that information is factual. Another item that arises from this aspect of fair use is that faculty use of nonfiction material is more likely to be fair use than fiction. (However, consumables such as test forms and workbook pages CANNOT be justified and should NOT be copied.)

### The Amount

How much work is used is critical in determining if usage is fair. Only the portions of the work relevant to the educational objectives of the course should be used. The amount used should NOT be considered the heart, or key information, of the work. Use the least amount of the work in proportion to the whole that can be used. A few paragraphs from a book would likely be considered fair use; a chapter in a short book or a book with few chapters is more difficult to justify. A 10 second segment of a popular song is likely fair use while the

entire 3 minute song is more difficult to justify.

### **Marketing Effect**

In most cases classroom uses pass the last item of the four factor test in that if the other requirements are met, there is no impact or a positive impact on the marketing of the original work. Faculty members should decide, for example, if their copying of sections of an original work means that students will refrain from buying the original work.

## **VIII. Examples of Accepted Instances of Fair Use**

The following are examples of instances in which fair use is accepted. *All four* factors must always be the test. Original sources should always be cited. The attached *Fair Use Checklist* can help with any fair use decision. In general, the more items checked in the left hand column the more likely it is that your use is fair.

- a. The usage in class directly supports an educational objective.
- b. Nonfiction sources are used.
- c. Statistics are used.
- d. The information used is news.
- e. Proportionately small amounts of the whole work are used.
- f. The amount of the work used is only what is necessary to meet the written educational objective.
- g. The work is used for critical analysis in class.
- h. There is insufficient time to obtain permission for the use of the current semester.
- i. The access to the information is restricted to students. (This favors use of the learning management system, Blackboard or other LMS, over open web sites.)
- j. No similar product, book article, etc., is offered by the copyright holder.

## **IX. “Rules of Thumb”**

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

- a. *Art, Photographs, Images, Chart, diagram, cartoon* – Can use up to 5 images of a particular author or photographer or 10% of a collected body of work
- b. *Books* – Can use entire book for critical analysis, otherwise use up to 10%
- c. *Film and videos* - Can use up to 3 minutes or 10%, whichever is less
- d. *Music* – Can use entire song, album or composition for critical analysis, otherwise use up to 10% of the work.
- e. *Newspapers, Magazines, Online Articles* –Can use full articles for critical analysis, otherwise use up to 10%
- f. *Poems* – Can use full poem for critical analysis, otherwise 10%

- g. *Web or television broadcasts* – can use up to 10% for the current semester only; for *News*, use the entire broadcasts for the current semester only

## X. Resource to Obtain Permission

### a. Web Resources

When copyrighted material fails the fair use test but is still a vital part of the objectives of a class, the faculty member should try to obtain permission from the work's creator. *When a faculty member is not sure if the usage is fair, the faculty member should try to obtain permission.* The usage could be licensed for a fee or granted without a fee. The US Copyright Office (<http://www.copyright.gov/>) can provide valuable information concerning whether or not a work is protected by copyright. The Copyright Clearinghouse (<http://www.copyright.com>) can be a resource in obtaining permission to use even whole works.

## XI. On-Campus Assistance

### a. IT Division

IT division can assist in getting permission when the usage is related to media or placing information into the learning management system.

An individual rights holder might have subdivided his rights in a number of ways. Such is frequently the case in published works. For example, a magazine may own initial printing rights but the article author retains for subsequent printings.

IT division's distance learning and educational technology department can assist with fair use checklist and analysis. Copies of these documents will be maintained by IT division's distance learning and educational technology department, if IT division assists with the research of the permissions.

### **Teach Act**

The *Teach Act* addresses the ability to digitize, or create electronic versions, of existing work. Copyright law applies even when the Teach Act was used to digitize copies.

IT division can assist in digitization of analog work for usage in the course management system within the confines of the *Teach Act*. Other commercial digital versions must not be available for the Teach Act to apply. The college must own the rights, have a learning management system that limits the usage of the material to the students, instructors and administrators in the course.

IT division cannot assign or install in course shells any content (course packs, epacks, etc.) which was produced exclusively for digital course delivery without the consent of the publisher/original creator.

### b. Academic Division

If there is a fee for the use, faculty should request this to be paid by the Academic division. The decision to fund the licensed use of a work will be based on whether or not the usage

helps to achieve course objectives and the expense.

Faculty should make requests a minimum of a semester in advance of the intended use in the classroom. The college is under no obligation to reimburse for rights fees that were paid by the individual without advanced approval. However, all requests will be considered.

The right to use a work is not necessarily comprehensive and does not necessarily extend in perpetuity. Faculty will be responsible for strictly adhering to any requirements of licensed use. Usage in this case should be reinforced by documentation that rights have been granted, who granted them, and showing the intended purpose and the extent of the usage of the work.

Documentation showing the grant of rights will be kept on file by the academic division if obtained by the college but should be kept in the personal files of the individual instructor if obtained by the individual. Copies of documentation of the individual will be provided to the college upon request.

c. Library

The college library may be able to order a copy of the book, film, etc. if only one copy is needed for use in the class.

Library databases generally allow the use and copying of articles, academic journals, newspaper articles, etc. Importing those items to Blackboard is allowed as long as the library maintains a license to use the databases. When "rolling courses" to the next semester, instructors should inquire whether or not the library still maintains the license. If the license expired or was not renewed, items from the database should be removed from the course management system or used per the guidelines of fair use contained in this document. This information should be supplied to the IT division's distance learning and educational technology department when requesting courses to be rolled over to another semester.

The library may be able to place files in eReserves in Blackboard for your courses. Items in eReserves are licensed by the library and can be used in most ways consistent with the conduct of the class. Do not move eReserve material to a social media, or otherwise unprotected web site to avoid violating copyright.

## **XII. Creative Commons**

*Creative Commons* licenses are not based in copyright law and has nothing to do with fair use. They are based on the work of a nonprofit organization based in San Francisco, California. The goal of Creative Commons is to allow a platform for the owners of content to freely share their creative works with others while maintaining some of the rights of ownership and while always being acknowledged as the original authors.

Creative Commons uses combinations of four distinct licenses to accomplish this goal. The licenses are not based in United States copyright law but high-profile court challenges around the world have upheld their veracity as instruments for users to share content. When an original author provides Creative Commons licenses with their content, college

members are able to use the content freely as long as they follow the conditions of the Creative Commons licenses

#### License Conditions

**Attribution (by)** - copying, distributing, displaying, and performing are allowed (as long as credit is given to the original author. Additionally derivative works are allowed as long as credit is given to the original author.

**Share Alike (sa)** - derivative works can be distributed as long as this is done so under an identical license to the original work.

**Noncommercial (nc)** - copying, distributing, displaying, and performing are allowed but only for noncommercial purposes. Additionally derivative works are allowed for noncommercial purposes.

**No Derivative Works (nd)** - copying, distributing, displaying, and performing are allowed as long as they follow the original verbatim or exactly as specified. Derivatives are not allowed.

### **XIII. Addenda**

- a. Fair Use Analysis Sample
- b. Fair Use Checklist



## Fair Use Analysis

**Work:** "Ethnocentrism versus Relativism" an excerpt from the book *Communication Works* by Gamble and Gamble, 6<sup>th</sup> edition. McGraw Hill, NY, NY 1999.

**Course:** COMM 1100 Human Communications.

**Factor #1: The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes.**

The property is used for non-profit, educational purposes only, in a password protected course offered through the University System of Georgia for academic credit toward the core curriculum. COMM 1100, Human Communication, was produced by the Advanced Learning Technologies as part of the eCore®, freshman and sophomore level core curriculum delivered online, to meet the Area B requirement for 4-5 semester hours in courses addressing institution-wide general education outcomes of the degree granting institution's choosing, in the areas of global issues, oral communication, information technology, critical thinking, wellness, geography, and/or foreign languages. The course is composed of six units.

**Factor #2: Nature of the copyrighted work. The courts are most likely to find fair use where the copied work is a factual work rather than a creative one.**

The property represents a list of ten true/false test statements for students followed by five questions for discussion or further thought. They are used to help the student determine his/her culturally ethnocentric or relativistic tendencies.

**Factor #3: The amount and substantiality of the portion used in relation to the copyrighted work as a whole**

The Work consists of  $\frac{3}{4}$  of one page of the 18 chapter book.

**Factor #4: The effect of the use upon the potential market for or value of the copyrighted work.**

The use of this material will have no effect on the potential market of the book. Although the book is not the required text for the course, this very small amount is the only portion of the book which will be used in the course. The adoption of the book was not considered because at a cost of \$68.75 the adoption of this book in addition to the preferred text would be a hardship on students.



## Fair Use Check List

The following Checklist for Fair Use is based on a document created by Professor Kenneth Crews and the staff of the Copyright Management Center at Indiana University-Purdue University Indianapolis. Based on the four factors of fair use—purpose, nature, amount and effect—the checklist was created to help educators, librarians and others evaluate content uses to determine if fair use applies.

This tool provides an important means for recording your fair use analysis, which is critical to establishing "reasonable and good-faith" attempts to apply fair use. For more information on the Copyright Management Center at Indiana University-Purdue University Indianapolis, visit [www.copyright.iupui.edu](http://www.copyright.iupui.edu).

### Purpose

#### Favoring Fair Use

- Directly related to classroom use
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

#### Opposing Fair Use

- 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
- 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
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder

### Opposing Fair Use

- Could replace sale of copyrighted work
- Impairs market or potential market for copyrighted work or derivative
- Available licensing mechanism for use of the copyrighted work
- Permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long term use