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FAIR USE GUIDELINES

MTC 551

The current copyright law is encoded in the U.S. Copyright Act of 1976 and its later amendments. Copyright is a statutory privilege extended to creators of works fixed in a tangible medium of expression. Copyright laws legally protect the potential monetary value of creative endeavors as a way of encouraging the producers of information and entertainment to publish their work, and thus to share it with others. The Copyright Act also sets forth four factors that courts are to consider in determining whether copying of someone else's work is permitted by the doctrine of fair use.

In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit or educational purposes,
2. the nature of 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.

Guidelines for Off-Air Recording and Videotapes

Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes is a product of a congressional committee and is not a part of the law. It does serve as the authority for taping off-air for educational purposes.

The copyright owner has exclusive rights to:

1. reproduce the work,
2. prepare a derivative work,
3. distribute the work,
4. perform the work publicly, and
5. display the work publicly.

In order for a school to use a video without paying royalties for a public performance, all four of these criteria must be met:

1. the use must take place in a classroom or similar place of instruction,
2. the use must be part of the regular instructional process and not recreational,
3. the use must be in the course of face-to-face teaching activities, and
4. the video recordings must be a lawfully made or acquired copy.

There are nine basic guidelines that you need to consider when video recording.

1. Recorded shows cannot be kept for more than 45 days after the recording date.
2. Recorded shows can only be shown within the first ten days of that 45 day period.

3. Off-air recordings can only be made through a teacher request, not by someone in anticipation of a need.
4. The recorded shows can only be shown two times within any single class, with the second time being only for reinforcement.
5. After ten days, the recordings can only be reviewed by the teacher for the possible purchase and inclusion into the curriculum.
6. If several teachers ask for the same program, duplicate copies can be made to fill the requests. These copies are subject to the same restrictions listed above.
7. The recordings are not to be altered in any way, though you don't have to show a recording in its entirety.
8. All copies must include the copyright notice as recorded on the broadcast program.
9. These guidelines apply only to non-profit education institutions, which are expected to establish control procedures to make sure these guidelines are met.

General Rules of the Law for Educational Photocopying

Teachers can do the following copying for his/her own scholarly research or use in teaching or preparing to teach a class. Multiple copies (one copy per student in a course) can be made if it meets the criteria of brevity, spontaneity, and cumulative effect and if each copy contains a copyright notice.

1. Brevity: Following are the guidelines for the amount that can be copied.
 - a. A complete poem printed on no more than two pages or an excerpt from a longer poem not to exceed 250 words copied in either case.
 - b. A complete article, story, or essay of less than 2,500 words can be copied in its entirety. For other kinds of prose, such as a play, a novel, or a letter, a copy must not be more than 100 words or ten percent of the whole, whichever is less. No matter how short the work, one may legitimately copy an excerpt of 500 words.
 - c. One chart, graph, diagram, drawing, cartoon, or picture per book or periodical issue.
2. Spontaneity: Copying is done by the teacher when there is not a reasonable length of time to request and receive permission to copy.
3. Cumulative Effect: Copying is only for one course and only nine instances of multiple copying per course during one class term is allowed. 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.

Note: Short works, such as children's books (picture books) are often less than 2,500 words cannot be copied as a whole; but an excerpt of **not more than two published pages** or ten percent of the book, whichever is the less.

You do not have permission to copy if:

1. copying is done to create or replace or substitute for anthologies, compilations, or collective works,
2. the item is consumable (examples: workbooks, exercises, standardized tests, etc.),
3. you are in any way substituting for purchasing books, periodicals, etc.,
4. you intend to charge the student more than what the item cost to copy, and/or
5. you intend to use it term after term.

General Guidelines for CD-ROMS's and Computer Software

Software Copyright Protections

1. Make sure you are only loading software onto as many machines as you have licenses. If you buy a "stand-alone" copy, you may only have that software on one machine. If you buy a lab pack of ten, you can load ten machines. Make sure you know the number of machines that are served with a site or network license.
2. You should not multiple load "drivers" from a stand-alone CD-ROM since those are also copyrighted.
3. If you buy an "upgrade" of a program, that then becomes your only legal copy of that program. The old copy must be archived or discarded but cannot be loaded on other machines in the College.
4. It is against copyright for a teacher to take home an original disk of a software program he/she is using at school and load it onto a computer at home. The reverse would also be true.
5. Make sure you are following the rules set up by the publisher if you load "shareware" or "freeware" programs.
6. Old copies of computer programs can be given away but should not be used in the building once they are designated "withdrawn" or no longer usable.
7. If you buy a hybrid or hybrid CD-ROM and pay for only a stand-alone version, you can load the drivers on the platform you choose. Once you've chosen the platform that is the only legal place the CD can be.
8. You can legally use one program with one student or group of students as long as you're only on one machine.
9. Anything a student would create and put on disk belongs to the student and not the school.
10. Make sure you know the copyright that applies when you go to download material off of the Internet. If the site asks you not to download, then don't.
11. Be aware that even if you load a program with the intent of immediately removing it and it is already loaded on another machine that is a copyright violation. All programs that have been on a machine, even deleted ones, leave a footprint that is detectable for a considerable period of time.
12. If you are given donated software, please respect the intent of the program, i.e., stand-alone, etc. Keep all paperwork on the donation. Please realize that technical support that came with the disk when purchased will probably not be transferred to you.
13. Taking parts of a program to use in separate creation can be a violation of copyright. Always give the correct credit and make sure you follow the new multi-media fair use guidelines.
14. Make sure you always have back-up and bootable disks that are updated in case of a computer crash. Make sure networks are backed up on a regular basis. Make sure your back-up disks, tapes, etc., are kept in a fireproof area.
15. If a school is consolidated or moves to a new building, the software normally can be transferred with you. You might have to re-register the software to keep your technical support going if a new name is used.
16. It is best for your students in programming classes to stay away from commercial games to help them develop their own. All of the graphics, sounds, motions, coding, etc., is copyrighted and these publishers are very aggressive in prosecuting these kinds of cases.

The Internet and Copyright

An Internet Copyright Law called the Digital Millennium Copyright Act was passed in December of 1998. The Internet is a fixed medium. This includes pictures, sounds, motion media, e-mail, etc.

When in doubt, ask for permission or make sure you stay within the multi-media guidelines.

At this time, it is permissible to link to another site without permission; however, it is nice to let their web master know that you have linked.

You normally can download one copy of an article, etc.; to make multiple copies you would need permission.

Intellectual property rights are a hot topic at this time. Most sites that know they could have copyright problems list very clearly what they give you as rights. If a site lists their copyright policy, please follow it. Remember, sites know who you are and when you download.

Be very careful if a web site gives you free copyright with pictures, sound, or video. They may not have the right to do so. If you do download off one of these sites, make sure you copy their permission to you to copy and use anything you would like off of their site.

Fair Use Guidelines for Multi-Media

1. You may use ten percent or three minutes, whichever is less, of a motion media work.
2. You may use ten percent or 100 words, whichever is less, to incorporate into a multi-media project. An entire poem of less than 250 words can be used, but not more than three poems by the same poet or five poems by different poets from any one anthology. For poems of greater length, 250 words can still be used, however, no more than three excerpts by one poet or five excerpts by different poets from a single anthology.
3. Up to ten percent, but never, more than 30 seconds of music and lyrics of a copyrighted piece of work. You may not alter a piece of music so that it changes the basic melody or fundamental character of the work. This pertains to music and music videos.
4. Photos and illustrations: No more than five images by the same artist or photographer. No more than ten percent of 15 images, whichever is less, from a collective work.
5. Databases: Up to ten percent or 2500 fields or cells, whichever is less. Field entry is defined as a specific item of information, such as a name or Social Security Number. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.
6. You may not have more than two usable copies made of these kinds of projects. One can be placed on reserve status. Multiple creators can each have a copy.
7. Once you do anything outside of these guidelines that apply to a classroom setting or classroom-based project, you must get all permissions that are necessary. These projects cannot be placed on the Internet, particularly without all the permissions granted.
8. Generally, a student multi-media project can be used by the student and kept in his/her portfolio for job seeking purposes.
9. Be very cautious in using any kind of media off of the Internet. Most of the material is copyrighted and enjoys the same protection as any other copyrighted work.
10. There should be a notice on the first screen of every multi-media work that certain material in the presentation was utilized under the multi-media fair use exemption.
11. If you go beyond the classroom project framework, you must seek the proper copyright permission.
12. You may make alterations in portions of a copyrighted work only if the alterations support specific instructional objectives. You need to note in your presentation that these alterations have been made.
13. Reproducing or decompilation of copyrighted computer games or code or control mechanisms of same, even for educational use, are outside the scope of these guidelines. There are actual laws covering this issue.

Copyright Guidelines for Music

Permissible Uses:

1. Emergency copying allows copies to be made to replace purchased copies which may not be available by performance time. However, you still must purchase these copies when they arrive.
2. Copying for the Academic Use Other Than Performance

- a. Only one copy per student is allowed. No more than ten percent of a work can ever be copied. Single or multiple copying of a section cannot comprise a performable unit like a section, movement, or aria.
 - b. Exception to the above rule can be made if:
 - i. one has confirmation from the copyright holder that the units is out of print or
 - ii. the unit is unavailable except in a larger work.
 - c. This copy can be made by or for a teacher for the purpose of scholarly research or preparation for a class.
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, are not distorted, and no lyrics are added.
 4. A single copy of a student's performance can be made for purposes of evaluation and rehearsal. This copy can be retained by the educational entity of the student.
 5. A single copy of a sound recording, i.e., a tape, disc, record, or cassette, may be made from the originals which are owned by the educational organization or the teacher for the purpose of constructing aural exercises or examinations and may be retained by the institution or the individual teacher.

Please note that a sound recording may involve three copyrights: one for the music itself, a second for the recording, and a third on the arrangement. If the sound recording is to be used in a public performance or a derivative work will be made, permission must be granted by all copyright owners. Even if the music is in the public domain, the arrangement of the music may not be.

Copyright Guidelines for Showing Movies and Other Audiovisual Works

When you buy, rent, or borrow a DVD or videotape of a movie (or any other audiovisual work) made by someone else, you normally obtain only the copy, and not the underlying copyright rights to the movie. You are free to watch the movie yourself, but, beyond that, your rights are very limited by law. In particular, you do not have the right to show the movie to "the public." In most cases, doing that requires a separate "public performance" license from the copyright owner.

The showing of a movie will be considered to be a "public performance" if either of the following is true:

1. You will be showing the movie to people other than members of your family or a small group of your friends.
2. You will be showing the movie in a place that is open to people other than members of your family or a small group of your friends (for example, a classroom or the Commons Theater), whether or not any such people attend.

(Generally speaking, then, showing a movie in your home or dorm room will not constitute a public performance, as long as you limit attendance to family and friends. Most other showings will constitute public performances.)

Even if your proposed showing will constitute a "public performance", you still will not need to obtain a license if any of the following is true:

1. You will be showing the movie in the course of "face-to-face teaching activities" (that is, not through MyTech or other forms of electronic transmission) that will take place in a classroom or similar place devoted to instruction (that is, not in an auditorium or other public venue, unless it is being used for, and restricted to participants in, the teaching activities), and you have a legitimate copy of the movie (which, in general, does not include one that you have videotaped yourself from a broadcast).
2. Your copy of the movie came with an express license authorizing the particular manner of showing. (For example, some educational movies, such as those purchased directly from

California Newsreel at the "institutional" price, come with licenses to show the movies for certain noncommercial institutional purposes.)

3. The movie you wish to show is in the "public domain." (Determining whether a particular movie is in the public domain can be difficult, and even movies that are quite old can still be protected by copyright. The Public Domain Movie Database publishes a list of movies it believes to be in the public domain, but it is neither complete nor authoritative.)

Note, however, that there is no general "educational," "nonprofit," or "free of charge" exception. Even a showing that is all three of those things will require a license if it constitutes a "public performance" and does not fall within one of the exceptions listed above. Thus, most showings outside of the class context will require licenses.

If you do need a "public performance" license, you can obtain one in one of the following ways:

1. By renting the movie directly from a distributor that is authorized to grant such licenses, such as Swank Motion Pictures, Inc., rather than from a video store.
2. By contacting the copyright holder (generally the studio) directly.

REPRODUCTION OF COPYRIGHT MATERIALS

Works Protected by Copyright

Copyright protection extends to literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works including television, and sound recording.

Unpublished works by U.S. and foreign authors are protected by the new copyright statute, as are published work by U.S. authors. The published works of foreign authors are subject to copyright under certain conditions, including coverage under national treaties such as the Universal Copyright Convention.

U.S. government works are excluded. Works produced for the U.S. government by its officers and employees are not subject to copyright.

Procedure

Copyright materials, be they print or non-print and including computer software, will NOT be duplicated unless such reproduction meets "fair use" standards or unless written permission from the copyright holder has been received.

Mitchell Technical College does not sanction illegal duplication in any form. Employees who willfully disregard the College's copyright position are in violation of Board policy and the law and assume all liability and responsibility related thereto.

Guidelines shall be developed and made available to all employees of the College to insure the fair use of copyright work.

The Vice President for Academics is responsible for establishing practices, which will enforce this policy.

REGULATIONS

1. Purpose

The College realizes that the United States Code makes it illegal for anyone to duplicate copyrighted materials without permission. The College further realizes that severe penalties are provided for unauthorized copying

of audio, visual, or printed materials unless the copying falls within the bounds of the "fair use" doctrine. P.L. 94-553 Sec. 107

2. Definition

Under the "fair use" doctrine, unauthorized reproduction of copyrighted materials is permissible for such purposes as criticism, comment, news reporting, teaching, scholarship or research. If duplicating or changing a product is to fall within the bounds of fair use, these four standards must be met for any of the foregoing purposes.

1. **THE PURPOSE OF CHARACTER OF THE USE.** The use must be for such purposes as teaching or scholarship and must be nonprofit.
2. **THE NATURE OF THE COPYRIGHTED WORK.** Staff may make single copies of; book chapters for use in research, instruction or preparation for teaching; articles for periodicals or newspapers; short stories, essays or poems; and charts, graphs, diagrams, drawings, cartoons or pictures from books, periodicals or newspapers in accordance with these guidelines.
3. **THE AMOUNT AND SUBSTANTIALITY OF THE PORTION USED.** Copying the whole of a work cannot be considered fair use; copying a small portion may be if these guidelines are followed.
4. **THE EFFECT OF THE USE UPON THE POTENTIAL MARKET FOR OR VALUE OF THE COPYRIGHTED WORK.** If resulting economic loss to the copyright holder can be shown, even making a single copy of certain materials may be an infringement, and making multiple copies presents the danger of greater penalties.

3. Authority

Staff may make copies of copyrighted MTC materials that fall within the following guidelines. Where there is reason to believe the material to be copied does not fall within these guidelines, prior permission shall be obtained from the Vice President for Academics. Staff members who fail to follow this policy may be held personally liable for copyright infringement.

Permitted Copies

1. Multiple copies, not exceeding more than one per student, may be made for classroom use or discussion if the copying meets the tests of "brevity, spontaneity and cumulative effect" set by the following guidelines. Each copy must include a notice of copyright.
 - a. Brevity
 - i. A complete poem, if less than 250 words and two pages long, may be copied; excerpts from longer poems cannot exceed 250 words;
 - ii. Complete articles, stories or essays of less than 2,500 words or excerpts from prose works not more than 1,000 words or 10% of the work, whichever is less may be copied; in any event, the minimum is 500 words;
 - iii. Each numerical limit may be expanded to permit the completion of an unfinished line of a poem or prose paragraph;
 - iv. One chart, graph, diagram, drawing, cartoon or picture book, book or periodical issue may be copied. "Special" works cannot be reproduced in full; this includes children's books combining poetry, prose or poetic prose.
 - b. Spontaneity
 - i. Should be at the "instance and inspiration" of the individual teacher.
 - c. Cumulative Effect
 - i. Teachers are limited to using copied material for only one course in the school in which copies are made. No more than one short poem, article, story or two excerpts from the

same author may be copied, and no more than three works can be copied from a collective work or periodical column during one class term. Teachers are limited to nine instances of multiple copying for one course during one class term. Limitations do not apply to current new periodicals, newspapers and current news sections of other periodicals.

2. A library or archive may reproduce one copy or recording of a copyrighted work and distribute it if: the reproduction or distribution is made without any purpose of direct or indirect commercial advantage; the collection of the library or archives is open to the public, or available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and if the reproduction or distribution of a work includes a notice of copyright. Libraries and their employees are not liable for unsupervised use.
3. Copies of materials for "face-to-face" teaching activities involving performances or displays made by students or instructors, religious services, live performances without commercial advantage, and the use of instructional broadcasts are permitted.

Prohibited Copies

1. The act prohibits using copies to replace or substitute for anthologies, consumable works or compilations or collective works. "Consumable" works include: workbooks, exercises, standardized tests, test booklets and answer sheets. Teachers cannot substitute copies for the purchase of books, publishers' reprints nor periodicals, nor can they repeatedly copy the same item from term-to-term. Copying cannot be directed by a "higher authority" and students cannot be charged more than actual cost of photocopying.
2. Schools must be licensed to play copyrighted music where the performer is paid or admission is charged, even if the admission is used to cover refreshment costs.
3. Jukeboxes must be licensed and a certificate of license must be displayed on each machine.
4. Recording copyrighted audiovisual works (such as broadcasts) and using them in the classroom is not fully resolved. When such use is contemplated, a request for an approved method of such use shall be made to the superintendent's office.
5. Employees and students should be aware that copying materials through the use of camera equipment, including those in cell phones, falls under the same laws and guidelines as other forms of copying.

LEGAL REF.: 17 U.S. Code §107

6/27/2016 – Responsible personnel updated to align with MTI's organizational structure. Guidelines added for showing movies and other audiovisual work. References to school district changed to Mitchell Technical Institute.

8/26/2024 – Responsible personnel updated to align with MTC's organizational structure. Removed paragraphs regarding library photocopying and future compliance with SD Department of Education guidelines for distance learning. Provided legal reference.