

Purpose

To provide guidance regarding copyright and intellectual property laws.

Introduction

As an institution committed to learning and leadership in the health sciences, Pennsylvania College of Health Sciences (PA College) requires that its faculty, staff, and students comply with all applicable laws concerning copyright and intellectual property. Members of the College Community who violate copyright law will be liable for their infringement. Violation of copyright law can give rise to both criminal and civil liability and penalties.

PA College also recognizes the importance of the fair use provisions of the Copyright Act ([Title 17 of the U.S. Code](#)) in higher education. Under the fair use provisions, as further discussed below, certain uses of copyrighted materials may be made without the permission of the copyright holder for purposes that include teaching, scholarship, and research. The College reserves the right to modify or waive specific guidelines set forth in this Policy when it believes that such modification or waiver is consistent with fair use.

Exclusive Rights of Copyright Holders

The federal Copyright Act grants certain exclusive rights to copyright holders in works of authorship ([Section 106](#)). These protected works include both published and unpublished works in a wide range of media - for example, books, articles, photographs, films and computer programs. The exclusive rights of the copyright holder include:

- The right to reproduce the work in copies.
- The right to distribute the work to the public.
- The right to make derivative works (i.e., modified versions of the work).
- The right to display the work publicly.
- The right to perform the work publicly.

As a general matter, these exclusive rights make it unlawful to transmit copyrighted work over the Internet without the permission of the copyright holder, except when such transmission falls within the fair use guidelines.

Individuals and institutions may seek permission from the copyright holder to copy, display or make other specific uses of works. However, it is not guaranteed that permission will be granted in all cases.

In certain instances, copyrighted works may be copied, displayed, or otherwise used without permission from the copyright holder. The Copyright Act's fair use provision provides that copyrighted works may in some instances be used without permission for purposes such as teaching, research and scholarship. In addition, the Copyright Act specifically permits certain uses of copyrighted works in educational settings, both within the classroom and in distance learning.

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Fair Use

The fair use provision of the Copyright Act ([Section 107](#)) provides guidelines to determine whether a copyrighted work may be distributed or otherwise used without obtaining permission from the copyright holder. Fair use provides the legal basis for many educational uses of copyrighted materials. These guidelines apply to the use of copyrighted materials both for teaching and research at PA College. Four factors must be considered in determining whether a particular use is a “fair use:”

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work. A use of a factual or scholarly work is more likely to be considered fair than is a use of a work that is predominantly expressive (such as a work of fiction or a dramatic film).
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Generally the smaller the portion used, the more likely the use is to be considered fair; however, the small portion could be considered copyright infringement if it is “the heart of the work.” “The heart of the work” is the most interesting, critical, or creative element of a piece of work; it captures the essence of the entire work.
4. The effect of the use upon the potential market for or value of the copyrighted work. A use is more likely to be fair if it does not have a substantial negative impact on the market for the work.

So, if you are using a work in a class at PA College (Factor 1), the work is made up mostly of published facts (Factor 2), you are using only a small portion of the work (Factor 3), and the use would be unlikely to harm the market for that work (Factor 4), you may be able to rely on fair use to make copies of that portion of the work for classroom use.

Fair use determinations, however, always depend on the specific facts of the use. In each instance, all the fair use factors must be considered, and there is no simple formula for determining whether or not a particular use is “fair.”

Use of Sound Recordings, Illustrations, and Photographs in Multimedia Productions

Up to 10 percent of a copyrighted musical composition may generally be reproduced, performed, or displayed as part of a multimedia program produced by an educator or student for educational purposes.

Generally, a single photograph or illustration may be used in its entirety, but no more than five images by any one artist or photographer may be incorporated into any one multimedia program. No more than 10 percent of the photographs or illustrations in any one collection may generally be used in a multimedia program.

Film and Video

PA College follows the classroom exemption provision of the Copyright Act ([Section 110](#)), and the [Conference on Fair Use \(CONFU\) Fair Use Guidelines for Educational Multimedia](#). Under these guidelines, most classroom uses of films and videotapes are permissible, provided that the showing is by instructors, guest lecturers or students and is done in connection with face-to-face teaching activities.

Films and videos may not be shown to a for-profit gathering. Such media may be shown outside the classroom, provided that the showing is to an individual or small group as part of an educational program (for example, an out-of-class assignment).

Off-Air Recording

Television or cable programming may be captured and replayed by faculty members and course instructors for purposes of instructional support and scholarship.

The following conditions must generally be met to ensure that the recording does not violate copyright guidelines:

- The program will be used only for instructional, scholarly, or research purposes.
- The instructor will erase the recording 45 days after the broadcast.

Note: The above regulations do not pertain to C-SPAN programming, which is provided as a public service and which may be taped without these restrictions.

Teaching and Learning in the Face-to-Face Classroom

Section 110(1) of the Copyright Act allows teachers and students to display or perform copyrighted works in face-to-face classroom situations. A face-to-face classroom is defined as a classroom that is physical, on site and in person. For instructors, this would include the display of art images, playing of a motion picture or audiotape, or the performance of a musical or theatrical piece. The same items could be included in student presentations in a classroom setting. Motion pictures or other audiovisual works (or images from them) may not be displayed, however, if the copies were not lawfully made and the instructor or student displaying the work knew or had reason to believe that they were not lawfully made.

Section 110(1) of the Copyright Act applies only to the display or performance of copyrighted works in the face-to-face classroom setting, not to the making multiple copies of material for classroom use. An instructor may make copies or excerpts of certain copyrighted materials – for example, an article, poem or cartoon – without obtaining permission if there is not enough time to seek permission. Limited copying for classroom distribution may be permitted as fair use.

Distance Learning and the TEACH Act

The TEACH (Technology, Education, and Copyright Harmonization) Act of 2002 updated [Section 110\(2\)](#) of the Copyright Act to extend some of the face-to-face teaching copyright exemptions to distance learning situations.

Under the TEACH Act, non-dramatic literary and musical works (e.g., an essay, a song) and “reasonable and limited portions” of other works may be displayed or performed in class sessions that are transmitted online, subject to a number of specified conditions.

The following guidelines are recommended for distance learning:

- The course material should be accessible only to students in the course, for the duration of the course, through a secure, password protected course Web site or through a password protected course management system such as Blackboard.

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- The instructor should post a notice to students that copyrighted work is being made available through the course and that students may not distribute or use the material outside of the course. An example is provided below:

“United States law governs the use of copyrighted material. These laws prohibit reproduction of the material for purposes other than the intended instructional purposes of this course. Other uses, including commercial use and any further electronic distribution of the material, may constitute copyright infringement.”

- Reasonable controls should be employed to prevent downloading and distributing the material by students. This can be done by using technology, such as streaming video, which enables viewing but is not downloadable or distributable, or embedded code to disable printing functionality.
- The material should be used only for instructional purposes as an integral part of the course session.
- The copy of the material used must be lawfully made and lawfully acquired.

There is no exemption under the TEACH Act for the use of works that were specifically produced for the purpose of educational use. Examples of such materials are electronic course packs and electronic textbooks provided by publishing companies. This type of material may be used only in accord with the contracts or licenses entered into between the intellectual property holder and the user.

Materials may not be digitized if they are already available in a digital format. The use of newly digitized material must be protected technologically.

As noted above, in the case of non-dramatic literary or musical works (e.g., a poem or a song), the entire work may be transmitted in an online class session. Visual images, such as a photograph or painting, which are allowable in a face-to-face classroom, may also be transmitted online. But only “reasonable and limited portions” of other works, such as a motion picture, may be presented online.

As noted above, the TEACH Act applies only to class sessions, not to other aspects of distance learning courses (such as the distribution of background material to students). The fair use provisions apply to all aspects of distance learning, and in some instances fair use may permit more extensive use of copyrighted materials than that specifically permitted by the TEACH Act.

Obligations

All faculty and staff wishing to use copyright materials are solely responsible for ensuring compliance with the above stated policy and copyright law. Individuals are expected to make a good faith determination as to whether their use of a work falls under a fair use exemption. Said determinations are the responsibility of the faculty or staff member(s) making them; PA College does not assume legal responsibility for any incorrect applications.

All PA College community members are expected to act responsibly and ethically by applying the herein policy to all educational activities. The College shall not be legally responsible for any violations of copyright laws by students.

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Copyright infringement is governed by federal law and violation of such may result in substantial fines up to and including \$150,000 per infringement and/or prison.

Library Policy

Course Reserves

The library's reserve collection is a subset of print books and other tangible media, designed to assist course instructors by providing access to supplemental or recommended materials for students enrolled in their courses. These items circulate for a two-hour period, and students are encouraged to use them on-campus. The library's collection development policy does not mandate the acquisition of textbooks that students are required to obtain.

Books from the Library's circulating collection can be placed on reserve at the request of an instructor. If the Library does not own the title, the instructor may recommend that the book be ordered, donate an extra copy provided by the publisher or place a personal copy on Reserve. Instructors wishing to place books on reserve may contact the library director to process the request.

Electronic Reserves

The transition from print to digital format, coupled with the widespread utilization of course management systems provide new ways to deliver reproductions of copyrighted materials to students. Such digital transmission of course materials is sometimes referred to as "electronic reserves." As with print reserves, the four fair use factors are the primary tool for evaluating whether copyrighted materials may be placed on electronic reserve without permission from the copyright holder. In addition, the College's licensing agreements with full-text databases and e-content platforms allow for the delivery of copyrighted materials to enrolled students for their personal use. In these cases, no permission is required, and a fair use analysis is unnecessary.

Instructors have the ability to upload photocopies or other reproductions of required and recommended course materials into their Canvas course shells, enhancing access and resource availability for their students. However, the library recommends that instructors provide links to articles in our collections, rather than uploading actual files into Canvas. Librarians can assist instructors in creating links to resources from our collections. Digital content, including articles, chapters, photographs, video clips, etc. are the responsibility of, and are managed by individual instructors as virtual "electronic reserves" and are accessible to students currently enrolled and authenticated students in Canvas.

All such materials must meet the guidelines of fair use noted above and meet the following criteria:

- The documents or reproductions must have been made in compliance with copyright law.
- Reproductions of copyrighted material must have been made either with the permission of the copyright owner or after determination by the instructor that the reproduction constituted fair use.

The full bibliographic citation must be clearly written or typed on the first page of the reproduced material.

NOTE: The following photocopied materials are unacceptable for electronic reserves:

- Course packs, or other collections of photocopied materials compiled to create or replace an anthology or course pack.
- Copies of, or from, consumable resources, such as workbooks, test booklets, answer sheets, etc.

Copy Machine and Printer Use

A copy machine and printer are available in the Learning Commons for patron use. Users of these devices assume responsibility for compliance with all laws governing copyright. use.

The following notice is displayed clearly at each machine:

“NOTICE: THE COPYRIGHT LAW OF THE UNITED STATES (TITLE 17 U.S. CODE) GOVERNS THE MAKING OF PHOTOCOPIES OR OTHER REPRODUCTIONS OF COPYRIGHTED MATERIAL. THE PERSON USING THIS EQUIPMENT IS LIABLE FOR ANY INFRINGEMENT.”

In general, one copy of one article from an issue of a journal may be made for educational purposes. Generally, a single copy may also be made of a portion of a book or monograph that does not exceed ten percent of the work. Unpublished material, such as manuscripts and theses, may in most instances be copied only with the permission of the author or the copyright holder.

Interlibrary Loan

Because libraries will not usually lend actual issues of periodicals, PA College’s Health Sciences Library will obtain copies of articles for students, faculty and staff for research purposes within the guidelines of [Section 108](#) of the Copyright Act and fair use. The library follows the guidelines for fair use that were formulated by the [National Commission on New Technological Uses of Copyrights Works](#) (commonly referred to as the CONTU guidelines). The CONTU guidelines specify that a library may borrow copies of up to five articles from the most recent five years of a periodical during each calendar year. For requests after the first five, copyright clearance charges will be assessed. The library will provide copies from document delivery suppliers that provide copyright clearance as part of their service. If an article is not available from such a provider or cannot be cleared by the [Copyright Clearance Center](#), the library may not be able to obtain a copy for the patron. The library closely monitors usage and bases collection development activities on borrowing statistics.

Copyright Resources

Copyright Agent for Our Campus

Contact Scott Denlinger, Director of Library Services, with questions, concerns, or suggestions concerning copyright at sbdenlinger@PAcollege.edu. You may also explore the Health Science Library’s online resources at [Copyright LibGuide](#).

Copyright Law

[Copyright Law of the United States \(Copyright Act of 1976 and amendments\), United States Copyright Office](#)

- [Section 106: Exclusive rights in copyrighted works](#)
- [Section 107: Fair use](#)
- [Section 108: Reproduction by libraries and archives](#)
- [Section 110: Exemption of certain performances and displays \(classroom exemption provision\)](#)

External Resource Links

The following resources are recommended to members of the PA College Community who are interested in learning more about copyright. Please note, however, that these resources are not themselves part of PA College's Copyright Policy.

- [Copyright & Fair Use, Stanford University Libraries](#)
- [Copyright Clearance Center, Inc. \(CCC\)](#)
- [Copyright and Intellectual Property, Association of Research Libraries \(ARL\)](#)
- [Creative Commons](#)
- [Digital Millennium Copyright Act \[PDF\] \(1998\), United States Copyright Office](#)
- [Reproduction of Copyrighted Works by Educators and Librarians \[PDF\] \(Circular 21\), United States Copyright Office](#)
- [The TEACH Act \[PDF\], U.S. Senate Report 107-31, June 5, 2001.](#)
- [What College and Universities Need to Know about the Digital Millennium Copyright Act, EDUCAUSE](#)

Adapted, with permission, from Emerson College, Iwasaki Library Copyright Policy (2004). Retrieved from <http://www.emerson.edu/academics/academic-services/library/about-library/policies/copyright-policy>.

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