Copyright Handbook

Jefferson Community College

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COPYRIGHT HANDBOOK
FOR COLLEGE PERSONNEL

Introduction

This handbook of information, guidelines and policy documents has been compiled as a reference guide for college, faculty, staff and administrators to help answer everyday questions about the use and reproduction of copyrighted materials and to provide information about college policy as it applies to the photocopying and reproduction of copyrighted materials in various formats. The handbook offers guidelines about what copying is permissible and appropriate in the context of higher education in general and for Jefferson Community College in particular. It should not be used as a substitute for sound legal advice. Questions which go beyond the scope of the information in this handbook will be referred to the JCC Library Advisory Copyright Committee for further action.

With permission much of the text of this handbook is taken from copyright legislation and legislative guidelines. Some of the text has been adapted from other policies and guidelines, such as the Association of Research Libraries’ Briefing Paper on Copyright and the American Library Association’s Model Policy Concerning College and University Photocopying. These documents address copyright issues of interest to institutions and balances approaches to a complex topic.

The Purpose of Copyright

The primary purpose of the copyright law of the United States is to foster the creation and dissemination of intellectual works for the public welfare. Copyright is a constitutionally conceived property right, which is designed to promote the progress of science and the useful arts by securing for an author the benefits of his or her original work of authorship for a limited time (U.S. Constitution, Art.I. Sec 8). The copyright law attempts to balance the rights of copyright owners with those of the users. In order to encourage the production of creative works, the copyright law provides incentive for the creators by granting them exclusive right to reproduce and distribute their work. The exclusive rights of the copyright holder are, however, subject to important exceptions. Certain public and private uses of copyrighted works are allowed under the law without the copyright holder’s permission if they can be determined to be fair use. Information about what constitutes fair use is discussed in detail on page 5 and should be read carefully.

Copyright Requirements

The Copyright Act of 1976 (hereafter referred to as the Copyright Act) defines the types of works protected by copyright and specifies the requirements for copyright protection.
Works must be of **original** authorship representing an **appreciable amount of creativity** and fixed in a **tangible medium of expression**. Protection begins from the moment a work is committed to writing, recorded on audiocassette tape, or filmed. Works of authorship include the following categories: (1) literary works; (2) musical works; (3) dramatic works; (4) pantomimes and choreographic works; (5) pictorial, graphic and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings.

**Copyright Notice**

A work is protected by copyright from the moment it is fixed in tangible form on paper, tape, etc. When a work is published, it must be published with proper copyright notice or, **under certain circumstances**, the copyright may be forfeited. Under the present Copyright Act, notice requirements have been relaxed so that an absence of notice on works published after January 1, 1978, when the Act became law, does not necessarily mean that the work is in public domain. However, omission of the notice does mean that an innocent infringer is not liable for damages. If, after normal inspection, a person copies and distributes a work on which no copyright notice is visible and the copyright holder finds out about it and claims infringement of copyright, the copyright holder could prevent the future distribution of copies, but could not hold the person liable for damages.

Proper copyright notice usually consists of the following three elements:

a. A symbol © or the word “copyright” or the abbreviation “Copr.”; or in the case of a phonorecord, the symbol ℗;

b. The year of the first publication of the work; and

c. The name of the copyright owner. Of the three options listed in a, it is recommended that the symbol © be used since that is the form of notice agreed on by all countries who are signatories to the Universal Copyright Convention.

For books, copyright notices are usually found on the back of the title page. Notices on periodicals are either on the title page, the first page of text, or in the masthead. Students own copyright to all works they create. Works published prior to January 1, 1978, were required to contain a copyright notice to be protected by copyright law.

Sometimes the words “All Rights Reserved” are printed underneath a copyright notice. Sometimes statements such as “No part of the publication may be reproduced or transmitted in any form or by any means, electronic or mechanical [etc., etc.]” are added. These statements are used to intimidate or mislead people and prevent photocopying and duplication. They are largely meaningless and do not override the concept of fair use rights.
Duration of Copyright

Under the 1999 Sonny Bono Act, copyright protection is in effect for the life of the author plus 70 years. For works with multiple authors, the death of the last surviving author triggers the beginning of the 70 years. Works made for hire, works written anonymously, and works written under a pseudonym are protected for 75 years after the first publication or 100 years after the date of creation, whichever expires first.

This represents a significant extension of the pre-1978 term of copyright protection, which lasted 28 years from the date of first publication, with an option to renew for one additional 28-year term. Determining the copyright status of a work is no longer as simple as it once was and faculty and staff who have questions about copyright duration should confer with the JCC library staff.

Works not Protected by Copyright

Anyone may reproduce without restriction works that were never copyrighted.

Writings published prior to January 1, 1978, without copyright notices are not protected and may be produced without restriction.

Please keep in mind that copyright notice requirements have been relaxed since 1978, so that the absence of notice on works published after January 1, 1978, does not mean the work is in the public domain. To avoid questions of copyright infringement, faculty and staff wishing to copy these materials should follow fair use practices.

Anyone may reproduce without constraint published works whose copyright has expired.

All copyrights dated earlier than 1910 have expired unless they have been renewed. Copyrights dated 1910 or later may have expired. Faculty and staff should either assume that copyright protection is still in effect for these materials or inquire whether protection is still in effect. Inquiries can be made to the U.S. Copyright Office in Washington D.C.

Anyone may reproduce without permission a publication of the U.S. Government.

U.S. Government publications may be copied freely because they are not copyrightable. They are considered to be within the public domain. This category
consists of **documents prepared by an officer or employee of the U.S. Government** as part of that person’s official duties. It does not extend to **documents published by others with the support of government grants and contracts**. These works may or may not be protected by copyright depending on the specifics of the contract under which they were created. Although their copyright status may not be readily apparent, it may be reasonable to assume that much of this material is protected by copyright.

A privately published work that consists preponderantly of one or more works of the U.S. Government must include in the copyright notice a statement identifying the portions of the work protected under the Copyright Act. In this case, the compilation or arrangement is considered to be an original work, but the government document material used in the compilation remains with the public domain and may be reproduced without permission of the copyright holder.

**Exclusive Rights in Copyrighted Works**

The Copyright Act grants exclusive rights to the owner of a copyright to do and to authorize any of the following:

a. **to reproduce** the copyrighted work in copies or phonorecords.\(^1\)
b. **to prepare derivative works** based upon the copyrighted work.
c. **to distribute copies or phonorecords** of the copyrighted work to the public by sale or by the transfer of ownership, by rental lease, or by lending.
d. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted works publicly.
e. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial graphic or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

The owner of the copyright of the copyrighted work has the exclusive right to reproduce and distribute the work. **It is important to be aware that the law applies even to material distributed free to students, for example, distributing cds to distance learning students as supplemental material.**

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\(^1\) Phonorecord is used here as a special term to underscore the fact that the sound recording (whether on record, tape, or disc) is a special work from the underlying work and has its own copyright. For purposes of economy, we will use “copy” to mean phonorecord as well whenever applicable.
**Limitations on Exclusive Rights: Fair Use**

**General**

The copyright owner’s exclusive reproduction and distribution rights are subject to important exceptions. The fair use exception in Section 107 of the Copyright Act permits copying without the copyright owner’s permission for purposes such as criticism, comment, scholarship, research, or teaching and also authorizes making multiple copies for classroom use **under certain circumstances** and where the use is reasonable and not harmful to the rights of the copyright owner.

The Copyright Act does not attempt to specify precisely what may be fair but leaves the determination for case-by-case decision-making. Fair use provisions of the law were purposely designed to be broad, so that they could be widely applied to a variety of educational situations. In determining whether a particular instance of copying could be considered as a “fair use” of a copyrighted work, a person must consider **four** factors:

a. **the purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;

b. **the nature** of the copyrighted work;

c. **the amount and substantiality** of the portion used in relation to the work as a whole;

 d. **the effect of the use** upon the potential market for or value of the copyrighted work.

It is important to remember that assessment of what is and what is not fair use relies on the judgment of the individual and must be made on a case-by-case basis. The following illustrations are meant to offer guidance about what might be considered fair use as we look at the four statutory criteria.

**1. Purpose and character of the use.**

A finding of fair use is more likely if

a. the use of the copyrighted work is for a non-profit educational purpose, rather than a commercial purpose (however, a non-profit educational purpose does not ensure absolutely that the use is fair);

b. no charge is made for the copies (beyond the actual cost of reproduction); and

c. the original and the copy do not serve the same function, e.g., a copy is made to avoid purchasing the original and is then used in place of the original.
2. **Nature of the copyrighted work.**

A finding of fair use is more likely if the copyright work is

a. a compilation of facts or information rather than a creative or imaginative work;

b. out of print or unavailable for purchase through normal channels;

c. not a consumable work (such as a workbook or study guide);

d. not intended for performance or public exhibition (such as a musical score); or

e. a newspaper or periodical (but not a newsletter) containing articles of current interest.

In the context of classroom use, copying from textbooks and other materials prepared primarily for the education market is less likely to be considered fair use than is copying from materials designed for general public distribution.

3. **Amount of substantiality of the material used in relation to the copyrighted work as a whole.**

Both the quantity (amount copied) and the quality (the importance of the portion copied) of the use must be considered. A finding of fair use is more likely if the material copied

a. is a small portion of the total work; and

b. does not contain a substantial amount of the essence or principle elements of the work.

4. **Effect of the use on the potential market for or value of the work.**

A finding of fair use is more likely if the use

a. does not supplant a portion of the market of the work; or

b. stimulates sales of the work.
Appendix B of this handbook contains a series of questions a person should ask before reproducing a copyrighted work to determine whether a particular use can be considered fair use. The above illustrations and questions in Appendix B will help faculty and staff answer everyday questions about reproducing copyrighted materials without permission of the copyright holder.

**Educational Uses of Copyrighted Material**

The legislative history of the Copyright Act clearly indicates an unwillingness to free educational copying from copyright control while at the same time recognizing a need for guidance about permissible amount of photocopying of copyrighted materials for educational purposes.

To offer some guidance, a set of *Guidelines for Classroom Copying in Non-for-Profit Educational Institutions* (hereafter referred to as Classroom Guidelines) was drawn up by representatives of various educational organizations and included, not as part of the Copyright Act itself, but as part of the legislative history of the Act. These Classroom Guidelines list specific, quantitative standards for minimum (but not maximum) fair use copying, including both single copying by teachers and multiple copying for classroom use. (These Classroom Guidelines are found on pages 7-11 of this document.)

It is important to note that these Classroom Guidelines were not uniformly welcomed by the educational community and may be particularly unsuitable (i.e. too specific and too limiting) in the context of postsecondary education. Their purpose is to state the minimum and not the maximum for educational use.

**Personal Research Use**

At the very least, faculty may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

- a chapter from a book;
- an article from a periodical or newspaper;
- a short story, short essay, or short poem whether or not from a collective work;
- a chart, diagram, graph, drawing, cartoon, or picture from a book, periodical, or newspaper.

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These examples reflect the most conservative guidelines for fair use. They do not represent
inviolate ceilings for the amount of copyrighted material which can be photocopied within
the boundaries of fair use. When exceeding these minimal levels, however, faculty and staff
should consider the four factors listed under the fair use guidelines previously discussed in
this handbook to make sure that any additional photocopying is justified. The following
demonstrate situations where increased levels of photocopying would continue to remain
within the parameters of fair use:

a. the inability to obtain another copy of the work because it is not available from the
library or another source or cannot be obtained within your time constraints;

b. the intention to photocopy the material only once and not distribute the material to
others;

c. the ability to keep the amount of material photocopied within a reasonable proportion
of the entire work (the larger the work, the greater the amount of material that may be
photocopied).

As a general rule, most single-copy photocopying for individual use in research – even when
it involves copying a substantial portion of a work – may well be considered fair use.

Quotation in Scholarly Writing

The right of one author to quote from another has long been recognized by copyright law,
provided that the quotation is only a small portion of the original work and that credit is
given. “Small portion” means, for example, two or three paragraphs of a book or periodical
article, a stanza of a poem, or a single chart or graph. More extensive quotation should not
be made without the express permission from the copyright owner.

FACE-TO-FACE CLASSROOM GUIDELINES

Books and Periodicals

The Classroom Guidelines allow a teacher to distribute photocopied materials to students in a
class without obtaining prior permission to make multiple copies from the copyright owner,
under the following conditions.

a. distribution of the same photocopied material does not occur every semester;

b. only one copy is distributed to each student and that copy becomes the student’s
property;
c. material includes a copyright notice on the first page of the photocopied material;

d. no charge is made for the copy beyond the actual cost of reproduction.

In addition to these considerations, the amount of material distributed should not exceed certain brevity standards:

1) **for prose** – a work may be copied in its entirety if it is less than 2500 words in length. If the work is longer, the excerpts copied should not exceed 1000 words, or 10% of the work, whichever is less;

2) **for poetry** – 250 words is the suggested limit;

3) **for illustrations** – one is the rule of thumb; the guidelines allow 10% of the total pages or images or one chapter of the work, whichever is larger.

There are also considerations of spontaneity and cumulative effect:

a. the copying is at the instance and inspiration of the individual faculty member;

b. the decision to use the material for maximum teaching effectiveness does not allow sufficient time to request permission prior to use;

c. the copying of the material is for only one course;

d. the copying is not done repeatedly from the same materials;

e. there are not more than nine separate instances of such multiple copying for one course during one class term.

These minimum standards are not terribly realistic in the college setting, but they do offer a framework of what is considered fair use in the educational setting. The guidelines allow photocopying for one course and a one-time instance of 10% or one chapter of a work whichever is greater.

Photocopying should not be done as a substitute for purchasing the material, particularly for multiple copy classroom use. Photocopying practices should not have a significant detrimental impact on the market for the original copyrighted work. For example, copying should not be used to create or replace a substitute for anthologies, compilations or collected works. Copying should not be substituted for purchasing “consumable works” such as workbooks, study guides, postcards, or answer-key workbooks.

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**Copying of Music For Face to Face Classroom Use**

Representatives of music educators and music publishers developed a set of specific *Guidelines for Educational Uses of Music* (hereafter referred to as music guidelines) similar to the Classroom Guidelines developed for books and periodicals. These Music Guidelines are intended to state the minimum standards of educational fair use of music and are part of the legislative history of the Copyright Act.

The Music Guidelines are not intended to limit the types of copying permitted under fair use standards, and they recognize that there may be instances of copying which do not fall within their stated parameters, but nonetheless may be determined to be fair use.

**Permissible Uses**

Following is a list of permissible uses for copying of musical works

a. Emergency copying to replace purchased copies that for any reason are not available for an imminent performance provided that purchased replacement copies shall be substituted in due course;

b. For academic purposes other than performance;

   1. **multiple copies** of excerpts of works may be made provided that the excerpts do not comprise a part of the whole which would constitute a performable entity (i.e. one song), such as a section, movement, or aria, but in no case more that 10% of the whole work. The numbers of copies should be one per student.

   2. **a single copy** of a work determined to be an out-of-print or an unavailable excerpt in a larger work may be made for scholarly research or in preparation for teaching.

c. Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

d. A single copy of recordings of performance by students may be made for evaluation or rehearsal purposes and may be retained by the education institution or individual instructor.

e. A single phonorecord of a sound recording of copyrighted music may be made from sound recordings owned by an educational institution or individual instructor for the purpose of constructing aural exercises or examinations.
**Prohibited Uses**

Examples of music copying which are considered to go beyond fair use are

a. copying to create, replace, or substitute for theologies, compilations, or collective works;

b. copying works intended to be consumable, such as a supplemental tape produced for a test;

c. copying for the purpose of performance except as an emergency;

d. copying in lieu of purchasing music, except under emergency circumstances or when works are out of print or unavailable.

Faculty and staff should keep in mind that these Music Guidelines are not meant to limit fair copying which permits copying a single copy of most material for personal use. They also do not prohibit editing a piece of music for personal scholarly pursuits or as a classroom exercise. They do, however, prohibit the making of substantial revisions of a piece of music and distribution or performance of the edited version.

**Classroom Performance of Films and Videotapes**

The Copyright Act protects audiovisual works such as films and videotapes. The law creates a legal distinction between classroom performances and other public performances or reception of programming in the privacy of one’s home. In-classroom performance of a copyrighted film or videotape is permissible under the following conditions:

a. the showing must be by instructors (including guest lecturers) or by students;

b. the showing of the video tape is in connection with face-to-face teaching activities;

c. the entire audience is involved in the teaching activity;

d. the entire audience is in the same room or same general area;

e. the teaching activities are conducted by a non-profit educational institution;

f. the showing takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium, or workshop; and

g. the videotape is lawfully made (the person responsible had no reason to believe that the videotape was unlawfully made).
Home Copied Videotapes for Classroom

The law makes a distinction between the act of recording a program on videotape in the privacy of one’s home and the act of displaying that program in a public space such as a classroom. It is clear that if a faculty member tapes a program on his/her VCR and shows it in the classroom, it must meet all of the above guidelines. For more information see the Media Center guidelines on the next page.

Reformatting Films and Videotapes for Classroom Use

Making a derivative copy of a copyrighted work (for example changing the format of a 16mm film to videotape) is also problematic for higher education. Creating a derivative work under current law is an important exclusive right of the copyright owner and is usually used for archival preservation. Some flexibility has been granted to libraries, but it is best to assume making of derivative works should not be done without prior permission.

Classroom Performances of Plays, Musicals, Operas, Sketches, etc.

Faculty and students may perform or display any work in a college-sponsored classroom as instructional activity for students, their families, and social acquaintances without seeking prior permission from the copyright owner and paying a license fee. If the audience consists primarily of off campus members of the community, the display may not be covered by classroom instruction exemptions and may constitute a copyright infringement. Permission from the copyright owner should be obtained for the performance.

Public Performances of Music, Drama, Films, etc.

The performance is allowed if

a. there is no purpose of direct or indirect commercial advantage;

b. no fee or compensation is paid to the performers, promoters, or organizers;

c. no admission is charged;

d. admission is charged, and the proceeds after deducting the reasonable costs of producing the performance are used exclusively for educational or charitable purposes and not for private financial gain, except where the copyright owner has served formal written notice of objection seven days before performance;

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admission is charged for a school play or a school dance, and notice is given to the copyright holder of the intended use of the music or play. If all the proceeds are used for educational or charitable purposes and the copyright owner does not object within seven days of the performance, the work(s) may be performed.

**MEDIA CENTER**

The **Media Center** of Jefferson Community College provides equipment and space for viewing, listening, and interacting with the library's non-print collection. The collection consists of videotapes, music cds, CD ROMs, DVDs, and cassette tapes selected to meet specific teaching and research needs. Media Center materials to be added to the collection are purchased with viewing rights. The materials may be used for no purpose other than instruction and at no other educational institution than the purchaser of record.

U.S. copyright laws govern the library's copying and viewing policies. Faculty may place copyright-secured video items on reserve. (Sample form for reserve requests is in Appendix F of the document). Library users may not duplicate or convert to private use any recordings in the Media Center.

- a. The Media Center shall not put illegal off-air recordings on reserve in the library. Recordings may not be made using cable or satellite reception, but rather antenna reception.
- b. The Media Center shall not make duplicate copies of illegal off-air recordings.
- c. The Media Center shall not alter off-air programs. Excerpts of programs can be used in class provided the recorded program is not altered from its original content.
- d. Off-air recordings shall not be added to the library's collection without permission from the copyright owner.
- e. The Media Center shall not duplicate copyrighted media materials.

Improper use of copyrighted materials—even in an educational setting—may render one liable to federal prosecution, and violations of the copyright law in teaching practices may subject one and the institution to liability for actual and/or statutory damages. State Board of Regents and institutional policies require adherence to copyright law; thus legal protection from the State Board may be in jeopardy in the case of employees who commit violations.
LIBRARY COPYING

In addition to exercising fair use rights as listed in Section 107 of the Copyright Act, non-profit libraries and archives are authorized to reproduce copyrighted works without permission under the circumstances indicated in Section 108 of the law.

Single copies of works or portions of works may be reproduced and distributed by the library employees if

a. there is no direct or indirect commercial advantage;
b. the library or archive is open to the public or available to researchers working in a specific field;
c. the copy contains a notice of copyright;
d. the effect of photocopying the material is not detrimental to the market for the work.
   (In general, the library should own at least one copy of the work and should not copy an entire work or journal issue.)

For example, a faculty member may place on reserve as a supplement to the course textbook a reasonable number of copies or articles from academic periodicals or a chapter from a book provided these materials meet the criteria for fair use.

A reasonable number of copies will, in most instances, be less than three, but factors such as the length of or difficulty of the assignment, the number of enrolled students and the length of time allowed for completion of the assignment may permit more copies.

In addition the faculty member may also request that multiple copies of photocopied copyrighted material be placed on reserve if there is insufficient time to obtain permission from the copyright owner. (See Appendix F for sample reserve request form) The material will remain on reserve until permission is received or taken off if permission is not granted. (See Appendix A for a sample permission letter.)

Copying for Other Library Uses

Libraries may make a single facsimile of unpublished works existing in their own collection for purposes of preservation and security. Libraries may also duplicate in facsimile form a published copyrighted work for the replacement of lost, stolen, damaged, or deteriorating copies. Before making the copy, the library must make a reasonable effort to obtain an unused replacement at a fair price.

The publisher or copyright holder should be contacted, an authorized reproducing service could be used, or out-of-print dealers could be queried to determine the availability of a replacement copy. The definition of a fair price could be considered as a price close to the price of the original item, unless the item is rare. For rare items, the market price would be considered fair price.
All public library computers, printers, and photocopiers will have a copyright notice posted on the equipment in accordance with The Copyright Law of the United States (Title 17 U.S. code). This title governs the making of copies of copyrighted materials and states the user of the equipment is liable for any infringement.

A library may make a single copy of an article or other contribution to a collection or periodical issue for an individual if the following conditions are met:

a. the copy becomes the property of the individual user;

b. the library has no notice that the copy will be used for any purpose other than private study, scholarship or research;

c. the library prominently displays copyright warning signs on all photocopying equipment, scanners, printers, and computer monitors.

**Interlibrary Loan**

The Copyright Act specifically authorizes the provisions of photocopies in lieu of interlibrary loans for single photocopies of articles from periodicals or collections or small parts of other copyrighted works with copyrighted liability. This right is limited and does not extend to systematic reproduction and distribution of copies. The borrowing library may not use this service as a medium to prevent purchase or subscription of a work.

Prior to the enactment of the Copyright Act, library and publisher organizations developed a set of guidelines to assist in interpreting the quoted language of the interlibrary loan proviso.

These guidelines were negotiated with the assistance of the National Commission on New Technological Uses of Copyrighted Words (CONTU) and were incorporated into the Congressional Conference Committee Report on the Copyright Act. The CONTU guidelines give the following interpretation:

a. with respect to a periodical title (not a given issue), a library or archives may not request within any calendar year more than six articles published in the periodical with five years prior to the date of the requests (articles that are more than five years old were generally considered to be so infrequently requested that they are not covered by the guidelines). This is referred to as the “Suggestion of Five”;

b. if more than six copies of an article from one title within the last five years are requested, a copyright declaration will be made and fees paid to the Copyright Clearance Center (CCC) by the Melvil Dewey Library of Jefferson Community College;
c. The interlibrary loan office of Jefferson Community College will be responsible for keeping all records required to ensure compliance with the Copyright Act;
d. Interlibrary loan materials will not be requested for the purpose of being placed on library reserve.

The law recognizes that photocopies may be provided in lieu of interlibrary loan. In the typical case, the provision of the photocopy serves exactly the same purpose as a loan of the work itself and simply reduces the risk of loss or damage in transit and reduces transaction cost.

**Photocopying and Duplication that Require Permission**

Photocopying and Duplication that requires permission outside of the scope of interlibrary loan is as follows:

a. Repetitive copying: The classroom or reserve use of photocopied materials in multiple copies or successive semesters will normally require advance permission from the copyright owner;
b. Copying for profit: Faculty should not charge students more than the actual cost of photocopying the materials;
c. Consumable work: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, workbooks, and study guides, normally requires permission from the copyright owner;
d. Creation of anthologies as basic text material for a course: Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will require permission of the copyright holders. Such photocopying is likely to be considered a substitute for purchase of the book and less likely to be deemed as fair use. These created anthologies cannot be created and used as reserve materials without permission of copyright holders. Such photocopying is more likely to be considered as a substitute for purchase of a book and less likely to be deemed as fair use.
USING MATERIAL FROM THE INTERNET

Copyright law governs the use of materials found on the Internet just as it governs the use of print documents, music, film, and photographs. The Internet is not a copyright-free zone. Copyrighted works on the Internet include news stories, software, novels, screenplays, graphics, and pictures, emails, and usenet messages. Copyright law protects almost everything on the Internet. Fair use guidelines do apply for materials used. See fair use guidelines as discussed earlier in this document and the Fair Use Check List in Appendix B.

Many aspects of the issue of copyright and the Internet are not resolved. The following information is intended to be used as a guideline to help avoid infringing on the copyright laws and plagiarizing someone else’s works:

What is protected on the WWW?

a. compiled list of links
b. original text
c. graphics
d. audio, video scripts or captions
e. video or streaming video
f. unique markup language sequences (HTML, XML, PHP, Java)
g. any elements that make up the original nature of a work

When Creating a Web page, you CAN

a. Link to other web sites (however, some persons or organizations have specific requirements for linking to their works. Check the site carefully to find a statement of requirements. It is best to ask permission if no statements are made;
b. Use free graphics on your web page from free clip-art sites. If the graphics are not said to be free, permission should be requested or the graphic not copied. This does not include graphics from Microsoft clip art and the JCC web site.
When creating a Web page, you CANNOT:

a. put the complete contents of another person’s or organization’s web site on your web page;
b. copy and paste information together from various Internet sources to create your own document. (Paraphrasing or quoting is allowed in limited amounts if credit is given to the original source);
c. incorporate another person’s or organization’s material, such as e-mail, in your own document without permission;
d. forward someone’s e-mail without permission

e. change the context of or edit someone else’s digital correspondence in a way, which changes the meaning.
f. copy and paste another’s lists of resources as your own;
g. copy and paste logos, icons, and other graphics from other web sites to your web page unless they are clearly marked as freeware or permission has been given by the originator.

Software

The use of software is governed by both copyright law and licensing agreements. Improper use of software—even in an educational setting—may render you liable to federal prosecution, and violations of the copyright law in your teaching practices may subject you and your institution to liability for actual and/or statutory damages. State Board of Regents and institutional policies require adherence to copyright law thus, legal protection from the State Board may be in jeopardy in the case of employees who commit violations.

A license for use in no way confers ownership rights. Licenses negotiated locally for the library are on file in the Library Director’s office. All software licenses are negotiated by and on file in Instructional Technology. For more information on software issues, please refer to the Software Use Policy, available by contacting Instructional Technology (315-786-2472 or 1-888-435-6522, ask for Instructional Technology).
Licensing

A license is an agreement between two parties with the licensor granting temporary use of its content to the licensee in return for certain undertakings and payment for the period of the license. The licensor is responsible for protecting the value and integrity of the license. The licensee is responsible for enforcing the provisions of the license.

Licensing agreements vary with each product and may be more restrictive than copyright law.

A license may determine

a. authorized users (staff, faculty, students…etc)
b. number of simultaneous users
c. number of searches allowed for term of license
d. remote access
e. number of copies that can be made of each entry
f. use of a printed copy (interlibrary loan, coursepacks, reserves)
g. use of persistent links (Blackboard, electronic reserves)

Improper use of copyrighted materials—even in an educational setting—may render you liable to federal prosecution, and violations of the copyright law in teaching practices may subject the represented institution to liability for actual and/or statutory damages. State Board of Regents and institutional policies require adherence to copyright law thus, legal protection from the State Board may be in jeopardy in the case of employees who commit violations.

Most licenses are in effect for a period of 12 months and are negotiated by a consortium or an on-campus designee. A license in no way confers ownership rights. Licenses negotiated locally for library databases are on file in the Library Director’s office. All software licenses are negotiated by and on file in Instructional Technology.

Creative Commons (http://creativecommons.org) is a nonprofit organization that has developed licenses that provide a flexible range of protections for copyrighted works. Rather than the traditional “all rights reserved” approach, these licenses voluntarily offer a “some rights reserved” option. Creative Commons licenses include Attribution, Noncommercial, No Derivative Works and Share Alike. These licenses can also be combined. If you find material marked by one of these licenses, you must abide by their restrictions.
The Free Software Foundation (http://www.fsf.org) oversees the various forms of the GNU General Public License, or GNU GPL. This license is used to allow the use and modification of free software and is most often see on open source software like Linux. “Free software” here refers to the user’s freedom to use and modify the software, not price. To be free software, users must be able to run, study, adapt, redistribute and improve the program. The GNU GPL is considered a copyleft license.
Distance Learning

Distance education is a planned teaching and learning activity that employs a wide spectrum of technologies to reach learners at remote locations. Instruction may be synchronous or asynchronous.

Distance learning employs a wide range of technologies and transmission modes including interactive, two-way television (ITV) as well as the Internet for online, blended and enhanced courses. Please be sure to check applicable copyright laws, as they are different depending on the mode of transmission and the media used.

Due to contracts with other organizations, e.g. the SUNY Learning Network and eArmyU, written copyright permission must be obtained before posting copyrighted content or media in online courses.

The DMCA

The Digital Millennium Copyright Act (DMCA) was signed into law October 28, 1998. The legislation implements two 1996 World Intellectual Property Organization treaties: the WIPO Copyright Treaty and the WIPO Performances Treaty. The Act is divided into five titles:

a. Title I implements The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998.
   
   1. requires countries to provide protection to preexisting works that have not fallen into public domain originating from other countries or created by nationals of other countries.

b. Title II, The Online Copyright Infringement Liability Limitation Act creates limitations on the liability to online service providers for copyright infringement when engaging in certain activities. This title adds a new Section 512 of the Copyright Act to create four new limitations to liability for copyright infringement by online service providers. This section also includes special rules concerning the application of limitations to nonprofit educational institutions. The four new limitations are
   
   1. transitory communications
   2. system caching
   3. storage of information on systems or networks at direction of users
   4. information location tools

c. Title III, The Computer Maintenance Competition Assurance Act, creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair. This title expands the existing exemption
relating to computer programs in section 117 of the Copyright Act, which allows the owner of a copy of a program to make reproductions or adaptations to use the program in conjunction with a computer.

1. Title III permits the owner of a computer to make or authorize the making of a copy of a computer program in the course of maintaining or repairing the computer.
   A. the new copy cannot be used in any other manner and must be destroyed immediately after the maintenance or repair is completed.

d. Title IV contains five miscellaneous provisions relating to the function of the Copyright Office concerning distance education, the exceptions in the Copyright Act for libraries and for making ephemeral recordings, “webcasting” of sound recordings on the Internet, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.
   1. defines ephemeral recordings as recordings made in order to facilitate a transmission.
   2. amends the exemption for nonprofit libraries and archives in section 108 of the Copyright Act to accommodate digital technologies and evolving preservation practices.
   3. orders the Copyright Office to report to the U.S. Congress within six months an expansion of existing exceptions for instructional broadcasting for the promoting of distance education.
   4. covers transmissions of sound recordings over the Internet using streaming audio technologies, expands the statutory license for subscription transmission to include webcasting as a new category of eligible nonsubscription transmissions.
   5. imposes obligations to make residual payments if a production company no longer holds the rights to a motion picture and has transferred the rights to another entity.

e. Title V, The Vessel Hull Design Protections Act, creates a new form of protection for the design of vessel hulls (i.e. drawings or photographs of the design from many views).
   1. creates a new system for protecting original designs of certain useful articles that make the article attractive or distinctive in appearance. Useful articles are limited to the hulls including decks of vessels no longer than 200 feet.
The DMCA did not effectively address the issue of continued use of digital technology in distance education therefore Congress again worked with the U.S. Copyright office to produce the TEACH Act.

**TEACH ACT**

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 updates copyright law to broaden instructors’ legal use of copyrighted materials in online instruction at accredited nonprofit educational institutions. Copyrighted materials affected by this law include, but are not limited to, print, still, images, audio recordings, video recordings, diagrams, charts, and graphs. This Act also includes communications of organizations and clubs and materials posted on a class management system such as BlackBoard.

a. the law **permits** instructors to use certain copyrighted materials during online instruction without obtaining permission from or paying royalties to the copyright owners;

b. the law **requires** instructors to comply with specific and rigorous limitations when displaying or performing copyrighted works during online instruction;

c. the law **does not** equate the use of copyrighted materials in online instruction to the use legally permitted for instruction in a physical classroom; therefore, instructors and institutions should not simply apply copyright law and fair use guidelines prescribed for classroom instruction to online instruction.

**Benefits of the TEACH Act**

**Due to** contracts with other organizations, e.g. the SUNY Learning Network and eArmyU, written copyright permission must be obtained before posting copyrighted content or media in online courses.

Instructors at an accredited nonprofit educational institution have greater flexibility to use third party copyrighted works in online course delivery;
The bill permits the display and performance of virtually all types of works during online instruction without the consent of the copyright owner, provided that:

1) the online instruction at an eligible institution is mediated by an instructor;
2) the transmission of the material is intended for receipt by students enrolled in the course, regardless of where the students are physically located;
3) the institution must employ measures to prevent “retention of the work in accessible form by recipients of the transmission...for longer than the class session;” and
4) the institution employs measures 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) these parameters do allow for retention of the content and student access for up to 15 consecutive class days in which the institution is open for regular instruction. The viewing must be in a controlled environment such as a classroom library, media center, and copying by students must be prohibited;
7) 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 law. The rights of use are also often limited to certain works, in limited portions, and only under rigorously defined conditions.  

---

4 Kenneth D Crews, “New Copyright Law for Distance Education: The Meaning and Importance of the TEACH Act”. November 10, 2003
Works that are Allowed

a. performances of non-dramatic literary works;
b. performances of non-dramatic musical works
c. performances of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"
d. displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session”.

The TEACH Act Requires an Instructor to:

1) inform students that
   a) the materials are copyrighted
   b) they may not save such materials to their computers
   c) they may not revise the materials
   d) they may not copy or distribute the materials (instructors may comply with this requirement by placing an announcement prominently on their course website.)

2) take reasonable actions to ensure that copyrighted materials covered by the TEACH Act are accessed only by enrolled students. (Only instructors, enrolled students, mentors, and administrators may be given access to a course that contains copyrighted materials.)

3) insist that students use a logon and password to access online instruction materials. (i.e. use of Blackboard will ensure that this requirement is met.)

Works that are Prohibited

a. works that are marketed "primarily for performance or display as part of mediated instructional activities transmitted via digital networks"
b. performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act, if the educational institution "knew or had reason to believe" that they were not lawfully made and acquired.
Instructor Oversight Requirements:

a. the performance or display "is made by, at the direction of, or under the actual supervision of an instructor."
b. the materials are transmitted "as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities" of the a Jefferson Community College classroom.
c. the copyrighted materials are "directly related and of material assistance to the teaching content of the transmission."

Other requirements:

a. transmission of content must be made "solely for use of students officially enrolled in the course for which the transmission is made."
b. transmission must be over a secure server.
c. transmissions may be copied and temporarily retained in a secure location for access by registered students only. Even registered students, however, should not be able to access the data "for longer than the class session."
d. copying and storage is allowed that is incidental or necessary to the technical aspects of digital transmission systems.
e. analog works may be digitized only if the work is not already available in digital form.
f. transmitted commercially produced multimedia must adhere to the terms of existing licensing agreements for materials acquired specifically for distance learning.

Permission is required under the following circumstances:

a. Commercial uses (course for-profit entity) portions of dramatic performances (musical or textual) and audiovisual works (motion pictures, videotapes, screen displays from computer programs) considered in excess of fair use;
b. Uncontrolled access to classes;
c. Use beyond period of "class session;"5

Copyright Handbook, Jefferson Community College

5 Julie Cunningham, CUNY Guide to Copyright, “Distance Learning”, http://library.gc.cuny.edu
Suggested Amounts Allowed:

**Motion Media**
Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational project.

Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational project. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

**Music, Lyrics, and Music Video**
Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of an educational project. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

**Illustrations and Photographs**
The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational project created under Section 2 of the TEACH Act. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational project.

**Numerical Data Sets**
Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of a educational project. A field entry is defined as a specific item of information, such as a name or Social Security number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet. A checklist to determine if compliance with the TEACH Act is in effect is in Appendix E of this handbook.

Appendix D of this handbook has a checklist to determine if compliance with the TEACH Act is in effect.
Appendix A: Writing for Permission and Sample Letter

How to obtain permission

When permission is required for use of photocopied materials, it is necessary to communicate complete and accurate information to the JCC Library who then will seek permission through the CCC (Copyright Clearance Center). If the request is asking permission to place a book on reserve fill out the Copyright permission letter following this page and submit directly to the publisher of the work. The American Association of Publishers suggests that the following information be included in a permission request to expedite the procedure.

1. title, author and/or editor, and edition of materials to be duplicated or placed on reserve.
2. If a photocopy, number of copies to be made.
3. exact material to be used, giving amount, page numbers, or chapters.
4. the purpose of the copying.
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. If the address of the publisher does not appear in the publication you may contact the JCC Library to obtain an address.

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, therefore, 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.

The Copyright Clearance Center (CCC) has the right to grant permissions and collect fees for photocopying rights to most publications. Libraries may copy from a journal registered with the CCC and pay a set fee. A list of publications for which the CCC handles permission fees is available from their web page at www.copyright.com.
Dear Publisher/Copyright Holder:

The following copyrighted material is required reading for my course at Jefferson Community College. I am requesting permission to place the cited material in the Library.

☐ Traditional Course Reserves in photocopy format
   Access is limited to students, faculty, and staff of Jefferson Community College. The material will be used for educational purposes only and not for profit.

**Time period:** Term(s): [Spring 02] Year: [2002]

| Course Name And Number: [LIB 101 – Library Orientation For Faculty] |
| Title: *Essays on Teaching with Technology* |
| Copyright: Publishing Co., 2002 |
| Material to be duplicated: Essays 1 and 2 |
| Distribution: Students in my classes using PCC Library Course Reserves |
| Type of reprint: PDF document, HTML, Photocopy etc. |
| Use: Supplementary teaching materials |

Thank you for your prompt consideration of this request. Your response by [date] would be most appreciated.

If you are not the copyright holder or do not have authority to grant this request, I would appreciate any information you can provide concerning the current copyright holder.

Sincerely yours,

Faculty Member
Jefferson Community College
1220 Coffeen St
Watertown NY 13601

I (We) grant permission to use the above material in JCC Library Course Reserves (Print) under the following conditions and time limits:

________________________________________________________________________

Date__________ Signature: ____________________________ Vendor: __________________________
Appendix B: Questions to Ask in the Determination of Fair Use

1. **How much of the copyrighted work is to be copied?**

   As a general rule, the more of a particular book or periodical copied, the less likely it is that fair use will apply.

2. **Is the request for a single copy or for multiple copies?**

   It is more difficult to justify multiple copies as fair use except for classroom purposes.

3. **How will the copying affect the market of the original work?**

   If a copy is meant to substitute for the original, the request is not fair use, unless the copy is to be used for archival or back-up purposes.

4. **What is the nature and format of the work to be copied?**

   Is the request to copy for a chapter of a book, an article in a periodical, or an audiotape, picture, slide, etc.? Creating an anthology of articles from a variety of sources, copying an entire book, record or audiotape is not fair use.

5. **What is the type of use to which the copy will be put?**

   Fair use includes copying materials for individual study and research and in some cases classroom instruction.

6. **What is the intended distribution of the copy?**

   If distribution of the copies will have an adverse effect on the market for the original, the request cannot be considered fair use.

7. **Is the copyrighted source acknowledged on the copy/ies?**

   Fair use requires a visible copyright notice on every copy.
Checklist for Fair Use

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project.

Name: ____________________________________________
Institution: _______________________________________  
Project: __________________________________________
Date: _____________________________________________
Prepared by: ______________________________________

PURPOSE

Favoring Fair Use
- Teaching (including copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- News Reporting
- Transformation 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
<table>
<thead>
<tr>
<th>Nature</th>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td></td>
<td>Factual or nonfiction bases</td>
<td>highly creative work</td>
</tr>
<tr>
<td></td>
<td>Important to favored educational Objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount</th>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Small Quantity</td>
<td>Large portion or whole work</td>
</tr>
<tr>
<td></td>
<td>Portion used is not central or significant to entire work</td>
<td>Portion used is central to the work or “heart of the work”</td>
</tr>
<tr>
<td></td>
<td>Amount is appropriate for favored Educational purpose</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effect</th>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>User owns lawfully acquired or Purchased copy of original work</td>
<td>Could replace sale of copyrighted work</td>
</tr>
<tr>
<td></td>
<td>One or few copies made</td>
<td>Significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td></td>
<td>No significant effect on the market or potential market of the copyrighted work</td>
<td>reasonably available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td></td>
<td>No similar effect on the market or Copyright holder</td>
<td>Affordable permission for use is available</td>
</tr>
<tr>
<td></td>
<td>Lack of licensing mechanism</td>
<td>numerous copies made</td>
</tr>
<tr>
<td></td>
<td></td>
<td>You made it accessible on the Web or in other public forum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Repeated or long-term use</td>
</tr>
</tbody>
</table>

---

This checklist is used with permission from the Copyright Management Center of Indiana University. This form is used to provide information and education and is not legal advice.
Copyright Issues for Classroom Use – Information for JCC Instructors

What if I want to hand out photocopies of a copyrighted work to my students, such as a poem, a short story, an article?

- Can be done for classroom use or discussion, but not homework;
- The use must meet requirements of brevity and spontaneity and cannot affect the market;
- may be done no more than nine times in a semester, per course and only make only one copy per student;
- There must be a copyright notice on the photocopy;

What if I want to show a video or DVD in the classroom?

- is it a video from the JCC Library? You can show it.
- is it a video or DVD of the instructor’s personal collection or rented from a video store? You can show it. The principle of spontaneity would apply.
- is it a copy of a video or a DVD you or someone else made? You may not use it.
- is it a recording of a television program? You may show a television program recorded by the educational institution, not the instructor, within 45 days of it’s original broadcast. The copy must be destroyed at the end of the 45-day period. The exception would be a very brief clip shown of a recording made by the instructor at home.
- is it news broadcast? You may show a recording of a news broadcast made by the instructor within ten days of it’s on air showing, provided it is from a channel accessible without the use of a cable connection. The recording would have to be destroyed at the end of the 10-day period.

What if I want to use images copied off the Internet in a PowerPoint presentation in my classroom?

- is it an image from a free clip art site? You may use any images from a free clip art source, just give credit for the source.
- is it an image from another Internet site? Any other images copied off the WWW must be cited, and the principles of spontaneity and brevity apply. You may not distort or otherwise modify any image.

What if I want to play a musical recording in the classroom?

- in performing a musical work the classroom exemption applies, so it is permissible to play a musical work, but the principles of spontaneity and brevity apply.
Appendix D: TEACH Act Check List

On Nov. 2, 2002, the “Technology, Education, and Copyright Harmonization Act” became law. The “TEACH Act” is designed to provide educators more opportunity for the use of copyrighted works in distance education programs while still offering adequate copyright protection to those works. In order to qualify for these further possibilities, educators must meet several requirements.

As the responsibilities of the TEACH Act will most likely fall upon different entities within any one educational institution, this checklist should be used as an aid to organize and ensure complete compliance with the “TEACH Act” for each copyrighted work. Remember, all requirements must be satisfied in order to comply with the law.
TEACH Act Check List

Please complete and retain a copy of this form in connection with each copyrighted work considered for your distance education course.

Name: _______________________

Institution: ____________________

Project: _______________________

Date: _______________________

Prepared by: ___________________

TEACH Act requirements that will likely fall within the duty of the Instructor:

☐ 1 The work to be transmitted is one of the following:
   ☐ A performance of a non-dramatic literary work; or
   ☐ A performance of a non-dramatic musical work; or
   ☐ A performance of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; or
   ☐ A display in an amount comparable to that which is typically displayed in the course of a live classroom session.

☐ 2 The work is not marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity.

☐ 3 The work to be used is not a textbook, course pack, or other material in any media which is typically purchased or acquired by students for their independent use and retention.

☐ 4 The performance or display is both:
   ☐ Made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities of the educational institution; and
☐ Is directly related and of material assistance to the teaching content of the transmission.

☐ 5 The institution does not know or have reason to believe that the copy of the work to be transmitted was not lawfully made or acquired.

☐ 6 If the work to be used has to be converted from print or another analog version to digital format, then both:

☐ The amount of the work converted is no greater than the amount that can lawfully be used for the course; and

☐ There is no digital version of the work available to the institution or the digital version available to the institution has technological protection that prevents its lawful use for the course.

TEACH ACT requirements that will likely fall within the duty of the Institution:

☐ 7 The institution for which the work is transmitted is an accredited nonprofit educational institution.

☐ 8 The institution has instituted policies regarding copyright.

☐ 9 The institution has provided information materials to faculty, students, and relevant staff members that describe and promote US copyright laws.

☐ 10 The institution has provided notice to students that materials used in connection with the course may be subject to copyright protection.

☐ 11 The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.

TEACH Act requirements that will likely fall within the duty of the Information Technology Officials:

☐ 12 Technological measures have been taken to reasonably prevent both:

☐ Retention of the work in accessible form by students for longer than the class session; and

☐ Unauthorized further dissemination of the work in accessible form by such recipients to others.
13 The institution has not engaged in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or dissemination of their works.

14 The work is stored on a system or network in a manner that is ordinarily not accessible to anyone other than anticipated recipients.

15 The copy of the work will only be maintained on the system or network in a manner ordinarily accessible for a period that is reasonably necessary to facilitate the transmissions for which it was made.

16 Any copies made for the purpose of transmitting the work are retained and solely used by the institution.

-This checklist is used with the permission of The CMC of Indiana University. This is to provide information and educational services to help JCC Staff/Faculty. This is not legal advice.
## Copyright Term and the Public Domain in the United States

7 July 2004

### UNPUBLISHED WORKS

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Copyright Term</th>
<th>What was in the public domain in the U.S. as of 1 January 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpublished works</td>
<td>Life of the author + 70 years</td>
<td>Works from authors who died before 1934.</td>
</tr>
<tr>
<td>Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)</td>
<td>120 years from date of creation</td>
<td>Works created before 1884.</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published before 1 January 2003</td>
<td>Life of the author + 70 years or 31 December 2047, whichever is greater</td>
<td>Nothing. The soonest the works can enter the public domain is 1 January 2048</td>
</tr>
<tr>
<td>Unpublished works created before 1978 that were published after 31 December 2002</td>
<td>Life of the author + 70 years</td>
<td>Works of authors who died before 1934.</td>
</tr>
<tr>
<td>Unpublished works when the death date of the author is not known</td>
<td>120 years from date of creation</td>
<td>Works created before 1884.</td>
</tr>
</tbody>
</table>

### WORKS PUBLISHED IN THE US

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1923</td>
<td>None</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published without a copyright notice</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, and without subsequent registration</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1978 to 1 March 1989</td>
<td>Published without notice, but with subsequent registration</td>
<td>70 years after the death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation</td>
</tr>
<tr>
<td>Date of Publication</td>
<td>Conditions</td>
<td>Copyright Term in the United States</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>Before 1 July 1909</td>
<td>None</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1 July 1909 through 1922</td>
<td>Published in compliance with US formalities</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published with notice, and still in copyright in its home country as of 1 January 1996</td>
<td>95 years after publication date</td>
</tr>
</tbody>
</table>

**Works Published Abroad Before 1978 Without Compliance with US Formalities**

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Conditions</th>
<th>Copyright Term in the United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 1909 through 1922</td>
<td>Published in a language other than English and without subsequent republication with a copyright notice</td>
<td>In the 9th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>In the public domain in its home country as of 1 January 1996</td>
<td>In the public domain</td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>Published in a language other than English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996</td>
<td>In the 9th Judicial Circuit, the same as for an unpublished work; in the rest of the US, likely to be in the public domain</td>
</tr>
<tr>
<td>Date of Publication</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>January 1996</td>
<td>Published in English, without subsequent republication with a copyright notice, and not in the public domain in its home country as of 1 January 1996</td>
<td></td>
</tr>
<tr>
<td>1923 through 1977</td>
<td>95 years after publication date.</td>
<td></td>
</tr>
</tbody>
</table>

### Works Published Abroad After 1 January 1978

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>After 1 January 1978</td>
<td>Copyright in the work in its home country has not expired by 1 January 1996</td>
</tr>
<tr>
<td></td>
<td>70 years after death of author, or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation</td>
</tr>
</tbody>
</table>

### Special Cases

<table>
<thead>
<tr>
<th>Date of Publication</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>After 1 July 1909</td>
<td>Created by a resident of Afghanistan, Bhutan, Ethiopia, Iran, Iraq, Nepal, San Marino, and possibly Yemen, and published in one of these countries. Not protected by US copyright law because they are not party to international copyright agreements</td>
</tr>
<tr>
<td>After 1 July 1909</td>
<td>Works whose copyright was once owned or administered by the Alien Property Custodian, and whose copyright, if restored, would as of January 1, 1996, be owned by a government. Not protected by US copyright law</td>
</tr>
</tbody>
</table>

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1 This chart was first published in Peter B. Hirtle, "Recent Changes To The Copyright Law: Copyright Term Extension," Archival Outlook, January/February 1999. This version is current as of 6 July 2004. The most recent version is found at [http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm](http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm).


All terms of copyright run through the end of the calendar year in which they would otherwise expire, so a work enters the public domain on the first of the year following the expiration of its copyright term. For example, a book published on 15 March 1923 will enter the public domain on 1 January 2019, not 16 March 2018 (1923+95=2018).

Unpublished works when the death date of the author is not known may still be copyrighted, but certification from the Copyright Office that it has no record to indicate whether the person is living or died less than 70 years before is a complete defense to any action for infringement. See 17 U.S.C. § 302(e).

Presumption as to the author's death requires a certified report from the Copyright Office that its records disclose nothing to indicate that the author of the work is living or died less than seventy years before.

"Publication" was not explicitly defined in the Copyright Law before 1976, but the 1909 Act indirectly indicated that publication was when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority.

Not all published works are copyrighted. Works prepared by an officer or employee of the United States Government as part of that person's official duties receive no copyright protection in the US. For much of the twentieth century, certain formalities had to followed to secure copyright protection. For example, some books had to be printed in the United States to receive copyright protection, and failure to deposit copies of works with the Register of Copyright could result in the loss of copyright. The requirements that copies include a formal notice of copyright and that the copyright be renewed after twenty-eight years were the most common conditions, and are specified in the chart.

A 1961 Copyright Office study found that fewer than 15% of all registered copyrights were renewed. For books, the figure was even lower: 7%. See Barbara Ringer, "Study No. 31: Renewal of Copyright" (1960), reprinted in Library of Congress Copyright Office. Copyright law revision: Studies prepared for the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, United States Senate, Eighty-sixth Congress, first [-second] session. (Washington: U. S. Govt. Print. Off, 1961), p. 220. A good guide to investigating the copyright and renewal status of published work is Samuel Demas and Jennie L. Brogdon, "Determining Copyright Status

8 The following section on foreign publications draws extensively on Stephen Fishman, *The Public Domain: How to Find Copyright-free Writings, Music, Art & More*. (Berkeley: Nolo.com, 2004). It applies to works first published abroad and not subsequently published in the US within 30 days of the original foreign publication. Works that were simultaneously published abroad and in the US are treated as if they are American publications.

9 Foreign works published after 1923 are likely to be still under copyright in the US because of the Uruguay Round Agreements Act (URAA) modifying the General Agreement on Tariffs and Trade (GATT). The URAA restored copyright in foreign works that as of 1 January 1996 had fallen into the public domain in the US because of a failure to comply with US formalities. One of the authors of the work had to be a non-US citizen or resident, the work could not have been published in the US within 30 days after its publication abroad, and the work needed to still be in copyright in the country of publication. Such works have a copyright term equivalent to that of an American work that had followed all of the formalities. For more information, see Library of Congress Copyright Office, *Highlights of Copyright Amendments Contained in the Uruguay Round Agreements Act (URAA). Circular 38b*. [Washington, D.C.: Library of Congress, Copyright Office, 2004].

10 US formalities include the requirement that a formal notice of copyright be included in the work; registration, renewal, and deposit of copies in the Copyright Office; and the manufacture of the work in the US.

11 The differing dates are a product of the question of controversial
Twin Books v. Walt Disney Co. decision by the 9th Circuit Court of Appeals in 1996. The question at issue is the copyright status of a work only published in a foreign language outside of the United States and without a copyright notice. It had long been assumed that failure to comply with US formalities placed these works in the public domain in the US and, as such, were subject to copyright restoration under URAA. The court in Twin Books, however, concluded "publication without a copyright notice in a foreign country did not put the work in the public domain in the United States." According to the court, these foreign publications were in effect "unpublished" in the US, and hence have the same copyright term as unpublished works. The decision has been harshly criticized in Nimmer on Copyright, the leading treatise on copyright, as being incompatible with previous decisions and the intent of Congress when it restored foreign copyrights. The Copyright Office as well ignores the Twin Books decision in its circular on restored copyrights. Nevertheless, the decision is currently applicable in all of the 9th Judicial Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam and the Northern Mariana Islands), and it may apply in the rest of the country.


INSTRUCTOR'S NAME: ______________________________________

COURSE NAME: _____________________________________________

COURSE #: _________________________   SECTION # ____________

TITLE OF ITEM: ____________________________________________

DATE TO PUT ON RESERVE: __________________________________

DATE TO TAKE OFF RESERVE: __________________________________

INSTRUCTOR'S SIGNATURE: __________________________________

Electronic submission equals a signature

Due to copyright restrictions the Media Center will no longer put anything on
reserve that was not lawfully purchased with the appropriate viewing rights. This
means that we cannot accept anything that has been recorded off of the television.

For Staff use only!

| Date on reserve: _________ | Initials: _____ | Copyright: __________ |
| Location: _________________ | Date taken off reserve: __________ |
The Library is encouraging the use of Blackboard for electronic reserves. If you are putting articles or self-produced outlines, notes, sample quizzes, etc. on reserve, using Blackboard will greatly improve accessibility to the material for your students. Your class will need to be set up in Blackboard. You will still need to acquire copyright permission for photocopied articles or chapters from books by filling out the following form. Please see Library staff for questions. Also, please allow 3 working days for the Library to process your reserve material and make available for use.

REQUEST FOR LIBRARY RESERVE

INSTRUCTOR'S NAME: ________________________________

COURSE NAME: _________________________________________

COURSE #: ___________________ SECTION # __________

IS YOUR COURSE REGISTERED ON BLACKBOARD? YES ___ NO ______

TYPE OF RESERVE: ELECTRONIC ______ LIBRARY USE ______

TITLE OF RESERVE ITEM: ____________________________________________

AUTHOR: _____________________________________________________________

DATE: ___________ VOLUME: ____________ PAGES: ____________

DATE TO PUT ON RESERVE: __________________________________________

DATE TO TAKE OFF RESERVE: _________________________________________

HAS COPYRIGHT PERMISSION BEEN REQUESTED OR OBTAINED?
YES ____ NO _____

COPYRIGHT PERMISSION NEEDED: __________

INSTRUCTOR'S SIGNATURE: ________________________________

Electronic submission equals a signature

For Staff use only!

Date on reserve: ___________ Initials: ___________ Copyright: ___________

Location: ___________ Date Off: ___________
GLOSSARY

Some of the items below are excerpted from the Copyright Law, Title 17, U.S. Code, and are cited as "US Code". See http://www.copyright.gov/title17/92chap1.html#101.

Anonymous work: An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author. (US Code)

Audiovisual work: "Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. (US Code)

Author: the person who actually created the work or, if the work was made for hire, the employer or the other person for who the work was prepared.

Collective Work: A "collective work" is a work such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. (US Code)

Compilation (Anthology): A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works. (US Code)

Computer Program: A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result. (US Code)

Concurrent license: A concurrent license permits a specified number of users to access software installed on a server at any given time.

Content: Various types of data that can be displayed, such as text, sound, images, photographs, and motion pictures.

Copies: “Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed. (US Code)

Copyright: A form of protection provided by the laws of the United States (title 17, U.S. Code) to authors of “original works of authorship,” including dramatic, artistic, musical, literary, and certain other intellectual works.
**Copyright Notice:** A copyright notice is an identifier placed on copies of a work to inform the world of copyright ownership that generally consists of the symbol or word “copyright,” the name of the copyright owner, the year of first publication, e.g., ©2005 Jane Doe. The copyright notice was once required as a condition of copyright protection, it is now optional.

**Copyright owner:** "Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right. (US Code)

**Course reserves:** Materials (including books, disks, A/V materials, journal articles and/or photocopies, electronic resources, instructional equipment and non-book items) chosen by the faculty to support class instruction. The materials are maintained in a separate location within a library, and access to the material is more restricted than is the access to items in general circulation.

**Created:** A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work. (US Code)

**Derivative work:** A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a "derivative work". (US Code)

**Digital Millennium Copyright Act (DMCA):** Legislation that implements two World Intellectual property Organization treaties into U.S. copyright Law: the WIPO Copyright treaty and the WIPO performances treaty and Phonograms Treaty. The first major provision requires contracting parties to provide legal remedies against circumventing technological protection measure to gain unauthorized access to a copyrighted work. The second provision facilitates enforcement of the copyright owner’s right to control access to his copyrighted work by prohibiting the manufacturing or making available technologies, products and services that are used to defeat technological measures controlling access.

**Digital Content:** Any information that is published or distributed in a digital form, including text, data, sound recordings, photographs and images, motion pictures, and software. (Online Law)

**Digital transmission:** A "digital transmission" is a transmission in whole or in part in a digital or other non-analog format. (US Code)
**Display**: To show an original work or a copy of it directly or by means of a film, slide, television image, or any other device or process or, in case of a motion picture or audiovisual work, to show individual images nonsequentially. 17 U.S.C. B 101. (Online Law)

**Electronic Reserves**: Supplemental educational materials (articles, textbook chapters, etc.) that colleges and universities make available to students online via a password protected intranet.

**Fair Use**: Various purposes for which the reproduction of a particular copyrighted work may be considered fair, such as a criticism, comment, news reporting, teaching, scholarship, and research. The permission of the copyright owner is not required in these limited instances.

**First Sale Doctrine**: The purchaser of a legal copy of a copyrighted expression is generally entitled to treat that copy in any way he or she desires, as long as the copyright owner’s exclusive copyright rights are not infringed. This means the copy can be destroyed, sold, given away or rented. Computer software is an important exception to the first sale doctrine.

**Fixed**: A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission. (US Code)

**Infringement**: Infringement involves engaging in one of the practices that are exclusively reserved for a copyright owner, without a license to do so.

**Joint Work**: A joint work is a work that is prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

**License**: Permission to use or distribute copyrighted content.

** Literary works**: "Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied. (US Code)

**Mediated Instructional Activities**: Activities in distance learning course that are controlled by or under the supervision of the instructor, an integral part of the course, and equivalent to the type of performance or display that would take place in a traditional live classroom setting
Motion pictures: "Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. (US Code)

Perform: To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible. (US Code)

Phonorecords (see also "Sound Recordings"): "Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed. (US Code)

Pictorial, graphic and sculptural works: "Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. (US Code)

Public Domain: Public domain describes works that either cannot be copyrighted, or works for which copyright protection has expired. Works in the public domain can be used without restriction. Any work registered for copyright before Jan. 1, 1923 is in the public domain in the U.S. Because of recent extensions of the duration of copyright, no currently registered works will enter the public domain before Jan. 1, 2019.

Publication: Distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication. (US Code)
Public performance or display: To perform or display a work "publicly" means -(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times. (US Code)

Serial Publication: A serial is a publication issued in successive parts, usually having numerical or chronological designations and intended to be continued with no predetermined end. Serials include periodicals, newspapers, annuals (reports, yearbooks, directories, etc.), journals, proceedings, transactions, etc. Most serials carry an International Serial Standard Number (ISSN) which uniquely identifies the serial and is usually (but not always) applicable to the entire history of a serial, whether past, present or future.

TEACH Act: On November 2nd, 2002, the "Technology, Education and Copyright Harmonization Act" (the TEACH Act), part of the larger Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush. TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education—including on websites and by other digital means—without permission from the copyright owner.

Title: A bibliographic and publishing term indicating the name of a book, magazine, journal or newspaper.

Transmit: To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent. (US Code)

Work: A trade book, textbook, magazine, journal, newspaper, cartoon, or conference proceedings published by technical and professional organizations, etc. Copyright Clearance Center can ordinarily authorize a user to reproduce or otherwise use only a portion of a work.