

NORTH HENNEPIN COMMUNITY COLLEGE

Campus Regulation VI.03.01

Copyright Policy

President's Signature [Ann Wynia]

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Introduction

Copyright is a legal protection provided to authors and other creators. It grants ownership right to the creators of literary, musical, dramatic, and choreographed works; pictorial, graphic, and sculptural works; motion picture and audio-visual works; sound recordings; computer software; digital media and products; and other intellectual property. Copyright is legally recognized for the life of the creator plus 70 years. An item automatically becomes protected by copyright when it is fixed in a tangible form.

The basis for modern copyright law is the Copyright Revision Act of 1976 and the accompanying "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals." Since the publication of these standards, additional legislation has been passed to protect the creators of works in newer non-print formats. In 1981, Congress set guidelines for the use of materials recorded from broadcast television with its "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes" and in 1998 the Digital Millennium Copyright Act (DMCA) extended copyright protection to creators and providers of digitized online material. On November 2, 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act set guidelines for the acceptable use of copyrighted material in a distance education environment. The aforementioned legislation, along with other Congressional actions and court decisions, combine to form modern American copyright law.

What is not protected by copyright?

Certain materials fall into what is called the "public domain" and are not protected by copyright law. They are considered the property of the public, not the individual creator, and may be used and reproduced freely. Here are examples of public domain materials:

1. Works for which copyright protection has expired;
2. Works for which the creator has waived copyright protections and/or specified that the work is to be placed in the public domain;
3. Short phrases or groups of words, titles, or names (i.e. "See you later" or Romeo and Juliet);
4. Common facts and theories (i.e. that $2 + 2 = 4$);
5. Ideas (i.e. an idea for a story about aliens attacking Earth);
6. Works created by United States government employees or officers as part of their official capacity (that is to say, government documents);
7. Works consisting entirely of information that is common property and contains no original authorship;
8. Works that are not yet fixed in a tangible medium.

Fair Use

"Fair Use" is a concept that permits use of limited portions of copyrighted works for the purpose of criticism, comment, teaching, scholarship, research, or news reporting. Section 107 of the Copyright Act of 1976 establishes four factors to be considered when attempting to determine Fair Use:

1. The purpose and character of the use, including whether such use is of a commercial nature or is intended for non-profit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
4. The effect of the use upon the potential market for or value of the copyrighted work.

In order to be protected under the doctrine of Fair Use, all four of the above criteria must be met.

Classroom copying

The 1976 Guidelines for Classroom Copying sets specific limits on and defines the extent of permissible copying for use in the classroom. An individual acting in accordance with these Guidelines is considered to be in compliance with copyright law.

GUIDELINES:

1. A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
 - A. A chapter from a book;
 - B. An article from a periodical or newspaper;
 - C. A short story, short essay, or short poem, whether or not from a collective work;
 - D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.
2. Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:
 - A. The copying meets the tests of brevity and spontaneity as defined below; and
 - B. Meets the cumulative effect test as defined below; and
 - C. Each copy includes a notice of copyright.

DEFINITIONS:

Brevity:

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: (a) Either a complete article, story, or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.
(Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
- iii. Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity:

- i. The copying is at the instance and inspiration of the individual teacher; and
- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

- i. The copying of the material is for only one course in the school in which the copies are made.
 - ii. Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
 - iii. There shall not be more than nine instances of such multiple copying for one course during one class term.
- (The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

3. Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts wherefrom are accumulated or are reproduced and used separately.
- B. There shall be no copying of or from works intended to be “consumable” in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets, and like consumable material.
- C. Copying shall not:
 - i. substitute for the purchase of books, publishers’ reprints, or periodicals;
 - ii. be directed by higher authority;
 - iii. be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

A note on copying student papers

Since student papers, projects, etc. are copyrighted works they may not be reproduced without written permission from the student (Title 17 United States Code, Section 106). Blacking out the student’s name or otherwise preventing the author’s name from being known does not constitute copyright compliance.

Copyright and non-print materials

The aforementioned copyright principles as applied to print materials apply to non-print materials as well. Below are listed specific types of non-print materials and any copyright particulars that apply to them beyond those listed above.

1. Pre-recorded videocassettes and DVDs

- A. If the original title was purchased with public performance rights the program may be shown in a public place or without the restrictions below.
- B. If the title was purchased or borrowed without public performance rights the performance or display of the work must conform to the “face-to-face” criteria as delineated in Section 110 of copyright law:
 - i. The performance or display of the work must be made under the supervision of the instructor as an integral part of the class session at an accredited non-profit educational institution;
 - ii. Audience must be in the same location as the instructor and

must be comprised solely of students enrolled in that particular class;

- iii. A lawfully obtained copy must be used for the presentation.
- C. Copies or duplicates of an original program may only be made and used with the written permission of the copyright owner.
- D. Format conversion is not permitted without written permission.

2. Off-air recording of broadcast programming

Private, in-home recording of broadcast programming for later private in-home viewing is permitted by copyright law. If using such a recording in an educational setting, however, the use must be in compliance with the 1981 "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes," which states:

- A. Recorded broadcast programs may be kept for 45 days from the date of broadcast, after which time they must be destroyed.
- B. Off-air recordings may be used once in the course of relevant teaching activities, and repeated once only when instructional reinforcement is needed, during the first 10 consecutive school days after the broadcast date. This copy may be obtained by the instructor for individual viewing outside the classroom for the remainder of the 45 day period only.
- C. A limited number of additional copies of a single recording may be made for use by other individual instructors for relevant teaching during this same 10 day period.
- D. Off-air recordings may be made only at the request of and used by individual instructors, and may not be regularly recorded in anticipation of requests.
- E. Off-air recordings may not be altered from their original content or be physically or electronically combined to constitute anthologies or compilations.

3. Recorded music

- A. If the original material was purchased with public performance rights the program may be played in a public place or to any audience. If the purchase or borrowing does not include public performance rights, the provisions of the "face-to-face" criteria listed above must be met.
- B. For academic purposes other than performance, single or multiple copies (not to exceed one copy per pupil) of an excerpt of a work (not to comprise an entire performable unit such as a section, movement, or aria, nor to exceed 10% of the whole work), may be made. Such copying, however, may not replace or substitute for an anthology or collective work.
- C. A single copy of a recording of a student performance may be made for evaluation or rehearsal purposes and may be retained by the instructor or institution.
- D. A single copy of copyrighted music may be made from a recording owned by the institution or individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the institution or individual teacher.
- E. Music may not be converted from one format to another without the written permission of the copyright owner.

4. Computer software

- A. Any software loaded on a college computer must comply with and be used in accordance with the terms of its software license.
- B. Computer software may not be duplicated unless written permission to do so has been obtained from the copyright owner.
- C. Ownership of a piece of computer software may not be transferred to another party unless such transfer is provided for in the license agreement.

5. Digitization of images

The guidelines in this section were proposed at the 1994 Conference on Fair Use (CONFU). Although these guidelines are not law, they are the result of an agreement between educators and copyright owners and it is generally agreed that an educator who abides by these guidelines is using copyrighted material in an acceptable fashion.

- A. Educators may digitize a lawfully acquired analog image for educational uses unless the image is readily available in usable digital format at a fair price.
- B. An educational institution may use digital thumbnail images created from analog images in a searchable catalog used by the institution.
- C. An educational institution may display digitized images through its secure electronic network provided that notice is included stating that the images shall not be downloaded, copied, retained, printed, shared, modified, or otherwise used, except as provided by educational use guidelines.
- D. An educational institution may compile and display digital images on its secure electronic network to students enrolled in a course given by the institution for purposes of classroom use, after-class review, or directed study.
- E. Educators and students may use and display digital images as part of a lecture or presentation in their field of study or expertise, including use at non-commercial professional development seminars, workshops, and conferences.
- F. The guidelines do not permit reproducing and publishing images in publications, including scholarly publications in print and digital format, for which permission is generally required.

6. Multimedia works

(See introductory note to above section)

A multimedia work is defined as any combination of music, text, graphics, illustrations, photographs, and audio-visual imagery combined into an integrated presentation or product.

- A. Students and instructors may create multimedia works for face-to-face instruction, directed self-study, or for remote instruction provided they are used for educational purposes in systematic learning activities. Instructors may use their multimedia works for up to two years after their initial use.
- B. The following "portion limitations" apply to multimedia works:
 - i. Up to 10% or 1,000 words, whichever is less, of a copyrighted text work;
 - ii. Up to 10%, but no more than 30 seconds, of music and lyrics from an individual musical work;
 - iii. Up to 10% or 3 minutes, whichever is less, of a copyrighted motion media work;
 - iv. A photograph or image may be used in its entirety but no more than 5 images by the same artist or photographer may be reproduced. When using images from a published

collective work no more than 10% of the whole or 15 images, whichever is less, may be used.

- C. Only two copies of an educational multimedia project may be made, only one of which may be placed on Reserve. An additional copy may be made for archival purposes but can only be used to replace a copy that has been lost or destroyed.
- D. Permission is needed for purposes that are commercial or go beyond the limitations in the above guidelines.

7. Distance education

In November, 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act became law. Designed to address copyright concerns in the area of distance education (which includes online learning), the law authorizes performances and displays of copyrighted works analogous to the kinds of performances and displays that take place in a traditional classroom setting. In order to be in compliance with the TEACH Act, all of the following criteria must be met:

- A. Must be an accredited non-profit educational institution;
- B. The institution has an institutional copyright use policy in place and provides information about copyright and promotes copyright compliance to its faculty, staff, and students;
- C. Notice is provided to students that course materials may be copyrighted;
- D. Work being used is not a digital educational work (i.e. a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks);
- E. Work is lawfully made and acquired;
- F. Work is a part of systematic mediated instructional activities and an integral part of or material assistance to teaching the class;
- G. Work is (select one):
 - Non-dramatic literary work (may use all)
 - Non-dramatic musical work (may use all)
 - Reasonable and limited portion of any other workOR
 - Display of any work in amount analogous to live classroom performance;
- H. Reception is limited to students enrolled in the course;
- I. Technological controls are instituted to prevent dissemination beyond recipient and retention of or access to work longer than the class session;
- J. Conversion of material from analog to digital format permitted if no digital version is available or available digital version is technologically protected to prevent TEACH uses.

Compliance with MnSCU policy

As a participating member of the Minnesota State Colleges and Universities (MnSCU) system, North Hennepin Community College complies with MnSCU Board policy 3.27 (Reproduction and Use of Copyrighted Materials).