

# Oklahoma City Community College Copyright Policy

## Introduction

Oklahoma City Community College (OCCC) promotes compliance with copyright law and understanding of the appropriate use of copyrighted works. Faculty, staff and students are expected to exercise good faith effort to comply with the provisions of the Copyright Policy as well as current U.S. Copyright law and any license or contract terms and provisions.

## I. Fair Use

[Section 107 of the Copyright Act](#) of 1976 lists four factors to help determine types of content usage that may be considered fair use. It also includes many other provisions allowing uses of works in the classroom, in libraries, and for many other purposes. Fair use is one of many statutory rights to use copyrighted works. These statutes, however, are highly detailed, and the right to use works is usually subject to many conditions and limitations.

No one factor alone dictates whether a particular use is indeed fair use. Fair use depends on a reasoned and balanced application of four factors: the purpose of the use; the nature of the work used; the amount used; and the effect of the use on the market for the original.

Uses are also allowed with permission. If the use of a copyrighted work is not within one of the statutory exceptions, permission may need to be obtained from the copyright owner. A non-exclusive permission does not need to be in writing, but is almost always good practice. The permission may come directly from the copyright owner, or through the Copyright Clearance Center or similar agency.

### ***Fair Use Checklist***

Following is the Fair Use Checklist which analyses the four fair use factors. Hopefully, it will serve two purposes. First, it should help educators, librarians, and others to focus on factual circumstances that are important to the evaluation of a contemplated fair use of copyrighted works. The application of the factors depends on the particular facts of the situation, and changing one or more facts may alter the outcome of the analysis. The checklist derives from the four factors and from the judicial decisions interpreting copyright law.

A second purpose of the checklist is to provide an important means for recording the decision-making process. Maintaining a record of the fair use analysis is critical to establishing your "reasonable and good-faith" attempts to apply fair use to meet the educational objectives. Section 504 (c) (2) of the Copyright Act offers some protection for educators and librarians who act in good faith. Once the application of fair use has been applied to a particular need, keep the completed checklist in your files for future reference.

As the checklist is applied it is likely that more than one box will be checked in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key concern is whether reason was used in checking any given box; the ultimate concern is whether the cumulative "weight" of the factors favors or opposes fair use. The user is most familiar with the project and best positioned to make that decision.

Purpose	
Favoring Fair Use	Opposing Fair Use
<input type="checkbox"/> Directly related to classroom use	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Research	<input type="checkbox"/> Profiting from the use
<input type="checkbox"/> Scholarship	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Nonprofit Educational Institution	<input type="checkbox"/> Bad-faith behavior
<input type="checkbox"/> Criticism	<input type="checkbox"/> Denying credit to original author
<input type="checkbox"/> Comment	
<input type="checkbox"/> News reporting	
<input type="checkbox"/> Transformative or Productive use (changes the work for new utility)	
<input type="checkbox"/> Restricted access (to students or other appropriate group)	
<input type="checkbox"/> Parody	

### Nature

#### Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

#### Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

### Amount

#### Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

#### Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

### Effect

#### Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder

#### Opposing Fair Use

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

## II. Library Use of Copyrighted Material

[Section 108 of the Copyright Act](#) provides specific exceptions for libraries and archives in which they may make reproductions without obtaining permission from, or providing compensation to, the copyright holder.

### To qualify for the exception, the library must:

- Produce no more than a single reproduction of a given work.
- Derive no commercial gain from the reproduction.
- Be open to the general public or to persons researching the specialized area in the library collection.
- Include a notice of copyright or, in the absence of a notice on the work copied, a note that the work may be protected under copyright law.

In these instances, reproduction is meant to be isolated and unrelated; it should not result in the related or concerted reproduction of the same materials over a period of time. Neither should reproduction be systematic and serve as a substitute for a subscription to or purchase of the original work.

### Reproduction under the exception may be done for the purpose of:

- **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user.
- **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation, security or deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, it may not be made available to the public outside the library or archive premises. Prior to making the reproduction, the library must make a reasonable effort to purchase a new replacement at a fair price. The library must also own the work in its collection before reproducing it.
- **Replacement of lost, damaged or obsolete copies.** The library may make up to three reproductions (including digital copies) of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network).

**Library user requests for entire works.** If certain conditions are met, the library may make one reproduction of an entire book or periodical at the request of either a library user or another library on behalf of a user. The library must first determine after reasonable investigation that a reproduction cannot be obtained at a reasonable price. The reproduction must become the property of the library user. The library must have no

reason to believe that the reproduction will be used for purposes other than private study, scholarship and research. Finally, the library must display the register's notice at the place in the library where users make their reproduction requests.

### **Interlibrary Loan**

Section 108 of the Copyright Act allows Interlibrary Loan (ILL) copying under certain terms and conditions. Specifically, Section 108 allows a qualifying library (see above) to copy and send to another library portions of copyrighted materials as part of its ILL service, provided the "aggregate quantities" of copied items received by the borrowing library do not substitute a periodical subscription or purchase of a work.

Unfortunately, Section 108 does not define "aggregate quantities" – creating some ambiguity in interpreting the ILL provision. To help resolve this uncertainty, the [National Commission on New Technological Uses of Copyrighted Works \(CONTU\)](#) developed guidelines during the 1970s with specific allowable amounts for ILL photocopying.

OCCC follows the CONTU guidelines for ILL.

### **Reserves**

Materials placed on traditional reserve are available to students in paper form at the institution's library. The library can place purchased materials on reserve without obtaining copyright permission. However, making multiple copies of these materials and placing those copies on reserve does require copyright permission, in most cases. Reserves are limited to one semester or less. After one semester, copyright permission must be obtained for any copies of materials, journal articles, etc, placed on reserve.

When evaluating copyright requirements for library reserves weigh the fair use factors as they apply to your particular situation.

The American Library Association (ALA) has endorsed the following standards for sharing copyrighted material through paper-based reserves:

1. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course, taking into account the nature of the course, its subject matter and level. See 17 U.S.C. § 107(1) and (3).
2. The number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same materials. See 17 U.S.C. § 107(1) and (3).
3. The material should contain a notice of copyright. See 17 U.S.C. § 401.
4. The effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.) See 17 U.S.C. § 107(4).

### **Photocopies for Students and Faculty**

As noted above, qualifying libraries are permitted to make reproductions for library users (e.g., students and faculty), provided the following criteria are met:

- The library or archive may make one reproduction of an article from a periodical or a small part of any other work.
- The reproduction must become the property of the library user.
- The library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- The library must display the register's notice at the place where library users make their reproduction requests to the library.

A provision in the Copyright Act absolves libraries from infringement liability for photocopy activity on their premises by patrons at unsupervised, self-service photocopiers. This provision requires that libraries display a specific notice stating, among other things, that photocopying may be subject to copyright law. This notice is often displayed on a wall behind the photocopier or on the copier itself.

### **Photocopying by Students**

Photocopying by students is subject to a fair use analysis as well. However, unlike classroom instructors who usually distribute copies in large numbers, students typically act only on their own behalf. As a result, their fair use analysis is likely to result in a different conclusion than that of a faculty member or instructor.

For students, a single photocopy of part of a copyrighted work, such as a copy of an article from a scientific journal made for research, would likely be considered fair use. Yet there are limits, even for students. For example, photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from workbooks, would most likely not be considered fair use under a reasonable application of the four fair use factors.

## **III. Classroom Use Regarding the Teach Act**

### **Face to Face Classroom Setting: Section 110(1) Fair Use**

Faculty and students are allowed to perform or display a copyrighted work in a face-to-face setting at a nonprofit educational institution in a classroom or similar place normally devoted to instruction provided the material is related to the course content. For example, the display of art images, the playing of video or audio, or the performance of a musical or theatrical piece. The same could be included in student presentations in a classroom setting. The copy used must have been lawfully made or acquired.

## **Digital Environments: Section 110(2) 112(f) TEACH Act**

In Fall, 2002, Section 110(2) and 112(f) [Congress passed the Technology, Education, and Copyright Harmonization \(TEACH\) Act](#) which includes the exemptions for digital transmission of performances and displays of certain works in accredited nonprofit educational institutions.

### **Performances**

1. Performances of nondramatic literary and musical works.
2. Reasonable and limited portions of any other works.

### **Display**

Display of any work but only in an amount comparable to that which is typically displayed in a live classroom setting.

### **Requirements**

1. Must provide notice to students that course materials used in connection with the course may be subject to copyright protection.
2. Transmission of course material must be accessible only to students officially enrolled in the course, for the class session, through a secure authenticated course web site or through a secure authenticated course management system (such as Angel).
3. Reasonable technological controls should be implemented to prevent recipients from downloading or sharing copyrighted content.
4. Performance or display must be made by, at the direction of, or under the supervision the instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities.
5. The performance or display is directly related and of material assistance to the teaching content of the transmission.
6. The copy of the material used must be lawfully made and acquired.

### **Digital Conversions**

1. Print or another analog work cannot be converted to a digital format unless a digital version of the work is not available to the institution or the digital version of the work available to the institution has secure technological protection that prevent its lawful use for the course. Copies of the work cannot be made from the copies.
2. The amount of work converted to digital is restricted to no greater than the amount necessary to be used for the course.

### **Content Exemptions**

The following uses are not allowed under the Teach Act.

1. The use of commercial works that are sold or licensed primarily for performance or display as part of mediated instructional activities via digital transmissions.
2. The transmission of textbooks, course packs, or other material in any media, which are typically purchased or acquired by students in the class session for their independent use and retention.

## **IV. Online Use of Copyright Materials**

“Copyright protection applies to a variety of creative works, both published and unpublished. Examples include printed materials, sound recordings, video recordings, visual artworks, computer software, web pages, and multimedia works. Copyrighted works are protected irrespective of the medium in which they are created or reproduced. Digital works and works transformed into digital format are extended copyright protection.”

- Information on the Internet is copyrighted.
- Free access to materials does not put them in the public domain.
- E-mail messages are copyrightable works.
- Fair Use exists in cyberspace.
- Copying, downloading, and/or file sharing of video, audio and other works may be considered copyright infringement unless authorized by the copyright law or the owner of the work.
- Unauthorized uploading or posting to a web site may be considered copyright infringement unless authorized by the copyright law the owner of the work.
- Only legal copies of digital works should be used.



- Although permission is not needed for a simple word link (also known as a “hypertext” link), it is required when the link comprises a trademark (or logo) from the linked site. Some other types of links known as framed links also require permission.

## V. Digital Millennium Copyright Act

OCCC implemented practices that abide and conform to Federal Law governing the copyright of digital resources as defined in the [Digital Millennium Copyright Act of 1998 \(DMCA\)](#) 105PL 105-304.

These practices apply to activities involving the download, upload, or distribution of copyright protected digital material in any manner, but not limited to electronic data, information, voice, video and software by OCCC computer system users on OCCC computer systems.

Some of the specific areas addressed by DMCA are:

Limitation on Infringement Liability for “Service Providers”;  
Limitations on exclusive rights; Distributed Learning  
Copyright exemptions for Libraries and Archives; and  
Limitations on exclusive rights; Computer Programs.

It is illegal under Federal law (Title 17 of the U.S. Code, and more recently the DMCA (105 PL 304), to download, upload, or distribute in any manner, copyrighted material in any form without permission or a license to do so from the copyright holder. OCCC neither condones nor supports the use of copyrighted material in ways not intended for such materials.

If you have a concern about the use of copyrighted material on the OCCC network or domain go to the [Information Technology Resources Acceptable Use Policy](#) and please contact the agent designated to respond to reports alleging copyright infringement. **Add link to agent when identified**

The DMCA outlines the actions institutions can take to reduce copyright infringement liability. As an on-line service provider for its faculty, staff, and students, OCCC offers Internet access, permits use of its facilities to make material available on the Internet and operates a campus web site with links to other sites. To manage risk, OCCC has put in place internal mechanisms to ensure compliance, and OCCC will monitor these mechanisms regularly. OCCC will:

- provide information materials that describe and promote compliance with U.S. copyright law to all users of its system and network, including a website, FAQs, and other online educational material
- register a designated copyright agent with the U.S. Copyright Office. **See below.**
- establish and implement a policy for termination of account holders who are repeat copyright offenders. See **Procedure to Resolve Matter** below.
- Monitor the status of standards activities directed to developing standard technical measures to protect copyrighted works, and accommodate and do not interfere with such technical measures once they are in use. ( [If this does not exist- recommend IITS develop standard technical measures](#))

### Designated Copyright Infringement Claims Agent

The Digital Millennium Copyright Act of 1998 (DMCA) requires online service providers to designate an individual to whom notices of alleged online copyright infringement are to be sent. Information regarding the designated agent for OCCC is provided below:

Service Provider	OCCC
Address of Service Provider	7777 S. May Avenue Oklahoma City, OK 73159
Agent Designated to Receive Notification of Claimed Copyright Infringement	<a href="#">General Counsel ?</a> <a href="#">Someone in IITS ?</a>
Full Address of Designated Agent to which Notification Should be Sent	
Telephone Number of Designated Agent	
Facsimile Number of Designated Agent	
Email Address of Designated Agent	

### How to Report Claims of Copyright Infringement

Claims of copyright infringement on OCCC servers should be sent to the College's designated agent. Please check the web address of the claimed infringing site to see if it is in the occc.edu domain. If so, send your claim via email, fax or postal mail to the designated agent above. The Digital Millennium Copyright Act (DMCA) Section 512 (c) (3) requires that a claim of copyright infringement sent to our designated agent contain the following information below.

1. A physical or electronic signature of the copyright holder or a person authorized to act on the behalf of the owner of an exclusive right that allegedly infringed.
2. A description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site is covered by a single notification, a list of such works at that site.
3. A description of the material that is claimed to be infringing or to be the subject of infringing activity, and information reasonably sufficient to permit the service provider to locate the material.
4. Information reasonably sufficient to permit the service provider to contact the complainant, such as an address, telephone number, and if available an email address.
5. A statement that the complainant has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complainant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### **Procedure to Resolve the Matter**

Anyone informed about a copyright infringement must send the entire complaint to the designated agent for the College. OCCC may disclose any or all information about the accused to third parties at its sole discretion. The designated agent will follow the requirements of federal law concerning notices to the complainant and the accused and retention of a record of the complaint and resolution.

OCCC reserves all right, at its sole discretion and without notice if it deems appropriate or necessary, to terminate the privileges of any system user who is accused of infringing the copyright of a third party, to disable access to material subject to a claim of infringing a copyrighted work as defined under the Digital Millennium Copyright Act, 17 U.S.C. § 512 (the “DMCA”) and to terminate the privileges of and to sanction any system user suspected of violating the law or this policy. Repeat violators will be sanctioned and their privileges will be terminated.

If a counter notice is received in the proper form from the individual who posted the material, the College will restore the original material. At this point, the original claimant has the option of accepting the counter notice, or taking further legal action.

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