



Copyright Policy

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Introduction

As an institution committed to leadership in communication studies and the performing arts, Emerson College requires that its faculty, staff, and students comply with all applicable laws concerning copyright and intellectual property. Members of the College community who violate copyright law will be liable for their infringement. Violation of copyright law can give rise to both criminal and civil liability and penalties. In cases of willful infringement, a court may impose statutory damages awards of as much as \$150,000 for each work infringed.

Emerson College also recognizes the importance of the fair use provisions of the Copyright Act in communication studies, the performing arts, and higher education more generally. Under the fair use provisions, as further discussed below, certain uses of copyrighted materials may be made without the permission of the copyright holder for purposes that include teaching, scholarship, and research. The College reserves the right to modify or waive specific guidelines set forth in this Policy when it believes that such modification or waiver is consistent with fair use.

The Emerson College Copyright Policy for Instructional Materials and Library Services was updated in 2004 by a task force that included the following members of the Emerson College staff: James Capobianco, Reference Librarian

and Coordinator of Library Web Site; Kimberly Hall, Head of Instructional Technology Group; Robert Fleming, Assistant Library Director; Elena O'Malley, Head of Library Computer and Internet Services; and Mickey Zemon, Executive Director of the Library. The Copyright Policy was approved by the Faculty Assembly and by the College's administration. Emerson College encourages its members to learn more about copyright compliance and welcomes input about this Copyright Policy. Please contact the Copyright Committee, copyright@emerson.edu, if you have any questions, concerns, or suggestions.

Exclusive Rights of Copyright Holders

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 These protected works include both published and unpublished works in a wide range of media - for example, books, articles, photographs, films, and computer programs.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

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

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

Individuals and institutions may be able to obtain permission from the copyright holder to copy, display, or make other specific uses of works. For advice about how to obtain such permission, please contact the Copyright Committee (copyright@emerson.edu).

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

Fair Use

The fair use provision of the Copyright Act (Title 17, [Section 107](#) of the U.S. Code) provides guidelines to determine whether a copyrighted work may be distributed or otherwise used without obtaining permission from the copyright holder. Fair use provides the legal basis for many educational uses of

copyrighted materials. These guidelines apply to the use of copyrighted materials both for teaching and for research at Emerson.

Four factors must be considered in determining whether a particular use is a "fair use":

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work. A use of a factual or scholarly work is more likely to be considered fair than is a use of a work that is predominantly expressive (such as a work of fiction or a dramatic film).
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. The smaller the portion used, the more likely the use is to be considered fair.
4. The effect of the use upon the potential market for or value of the copyrighted work. A use is more likely to be fair if it does not have a substantial negative impact on the market for the work.

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

Fair use determinations, however, always depend on the specific facts of the use. In each instance, all of the fair use factors must be considered, and there is no simple formula for determining whether or not a particular use is "fair." If you have questions about whether a particular use is fair, please consult the Copyright Committee (copyright@emerson.edu).

In addition, the following resources provide helpful information and examples of fair use determinations: [University of Texas Copyright Crash Course, Four Factor Test](#) and [Regents Guide to Understanding Copyright & Educational Fair Use, University System of Georgia](#).

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

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

As a general rule, a single photograph or illustration may be used in its entirety, but no more than five images by any one artist or photographer may be incorporated into any one multimedia program. No more than 10% of the

photographs or illustrations in any one collection may generally be used in a multimedia program.

Teaching and Learning in the Classroom

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

For more details about using films and videos, please see the [Media Services Center Policy](#).

Section 110(1) of the Copyright Act applies only to the display or performance of copyrighted works in the face-to-face classroom setting, not to the making multiple copies of material for classroom use. Under a set of generally accepted [Guidelines for Classroom Copying](#), an instructor may make copies or excerpts of certain copyrighted materials - for example, an article, poem, or cartoon - without obtaining permission if there is not enough time to seek permission. In addition to these Guidelines for Classroom Copying, limited copying for classroom distribution may be permitted as fair use.

Distance Learning and the TEACH Act

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

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

We recommend the following guidelines, based on the [North Carolina State University Libraries' TEACH Toolkit](#), for distance learning:

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

2. The instructor should post a notice to students that copyrighted work is being made available through the course and that students may not distribute or use the material outside of the course. An example of such a notice follows:
United States law governs the use of copyrighted material. These laws prohibit reproduction of the material for purposes other than the intended instructional purposes of this course. Other uses, including commercial use and any further electronic distribution of the material, may constitute copyright infringement.
3. Reasonable controls should be employed to prevent downloading and distributing the material by students. This can be done by using technology, such as streaming video, that allows for viewing but not downloading and distributing.
4. The material should be used only for instructional purposes as an integral part of the course session.
5. The copy of the material used must be lawfully made and lawfully acquired.
6. There is no exemption under the TEACH Act for the use of works that were specifically produced for the purpose of educational use. Examples of such materials are electronic course packs and electronic textbooks provided by publishing companies. This type of material may be used only in accord with the contracts or licenses entered into between the intellectual property holder and the user.
7. Materials may not be digitized if they are already available in a digital format. The use of newly digitized material must be protected technologically.
8. As noted above, in the case of nondramatic literary or musical works (e.g., a poem or a song), the entire work may be transmitted in an online class session. Visual images that may be presented in a face-to-face class (e.g., a photograph or a painting) may also be transmitted online. But only "reasonable and limited portions" of other works, such as a motion picture, may be presented online.

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

Library Policy

Reserve Desk Policy

The Library's Reserve Desk assists course instructors in providing copies of required or recommended readings for students enrolled in their classes.

Books from the Library's Circulating Collection will be placed on the Reserve shelf at the request of an instructor. If the Library does not own the requested book, the instructor may request that the book be ordered, or may place his or her own personal copy on reserve.

Instructors may also have photocopies or other reproductions of required and recommended course materials placed on reserve in the Library. These reproductions must meet the following guidelines:

1. All reproduced materials must be the property of the instructor placing the item on reserve.
2. The reproductions must have been made in compliance with copyright law. Reproductions of copyrighted material must have been made either with the permission of the copyright owner or after determination by the instructor that the reproduction constituted fair use.
3. The full bibliographic citation must be clearly written or typed on the first page of the reproduced material.
4. The instructor must sign the reserve form's copyright compliance statement before the Library will place material on reserve.

The following photocopied materials are unacceptable for reserve:

course packs, or other collections of photocopied materials compiled to create or replace an anthology or course pack.

Copies of, or from, consumable works, such as workbooks, test booklets, answer sheets and the like.

Instructors wishing to place material on reserve must fill out and submit a reserve form. Please allow two weeks to process the request.

Electronic Reserves

The migration of library resources from print to digital format and the advent of course management systems like WebCT provide new ways to deliver reproductions of copyrighted materials to students. Such digital transmission of course materials is sometimes referred to as "electronic reserves." As with print reserves, the four fair use factors are the primary tool for evaluating whether copyrighted materials may be placed on electronic reserve without permission from the copyright holder. In addition, the College's licensing agreements with full-text databases allow in some cases for the delivery of copyrighted materials to enrolled students for their personal use. In these cases, no permission is required, and a fair use analysis is unnecessary. The Association of Research Libraries' (ARL) [Electronic Reserves and Fair Use Statement](#) provides further guidance in this area.

Due to space and staffing considerations, the library must generally limit to 25 the number of items that may be placed on reserve by any instructor for a single class.

Copy Machine Use

Several copy machines are available in the Library for Emerson users with the understanding that copying by or for Library users will not involve any infringement of copyright. Any copying of copyrighted works without the permission of the copyright holder must be kept within the limits of fair use.

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

Interlibrary Loan

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

Media Services Center Policy

Film and Video Collection

The Media Services Center follows the classroom exemption provision of the Copyright Act ([Section 110](#)), and the [Conference on Fair Use \(CONFU\) Fair Use Guidelines for Educational Multimedia](#).

Under these guidelines, most classroom uses of films and videotapes are permissible, provided that the showing is by instructors, guest lecturers, or students and is done in connection with face-to-face teaching activities.

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

Off-Air Taping

Media Services will tape off-air television or cable programming at the request of faculty members and course instructors for purposes of instructional support and scholarship. The following conditions must generally be met to ensure that the taping does not violate copyright guidelines:

1. The requester must submit a signed requisition stating the program will be used only for instructional, scholarly, or research purposes.
2. The requester may not copy the tape, and must return the tape to Media Services within 30 days of the broadcast.
3. Media Services will erase the tape 45 days after the broadcast.
4. The above regulations do not pertain to C-Span programming, which is provided as a public service and which may be taped without these restrictions.

Audio and Video Duplication

The Media Center provides audio and video duplication services for faculty members and instructors for classroom support and scholarship. Copyrighted work may not generally be duplicated without permission from the copyright holder. It is the instructor's responsibility to obtain such permission.

The Media Center may also duplicate copyrighted audio or video works for purposes of preservation and security, provided that a replacement copy is not available for purchase.

Copyright Policy Links

The following resources are recommended to members of the Emerson College community who are interested in learning more about copyright. Please note, however, that these resources are not themselves part of the Emerson College Library Policy.

CONTU Guidelines on Photocopying under Interlibrary Loan Arrangements, National Commission on New Technological Uses of Copyright Works (CONTU), Final Report, pg.54-55

<http://www.cni.org/docs/infopols/CONTU.html>

Copyright, American Library Association (ALA)

<http://www.ala.org/ala/washoff/WOissues/copyrightb/Default1964.htm>

Copyright & Fair Use, Stanford University Libraries
<http://fairuse.stanford.edu/>

Association of Research Libraries (ARL)

- Copyright and Intellectual Property, Association of Research Libraries (ARL)
<http://www.arl.org/info/frn/copy/copytoc.html>
- Digital Millennium Copyright Act - Status & Analysis, Association of Research Libraries (ARL)
<http://www.arl.org/info/frn/copy/dmca.html>
- Electronic Reserves and Fair Use, Association of Research Libraries (ARL)
<http://www.arl.org/newsltr/232/ereserves.html>

Copyright Clearance Center, Inc. (CCC)
<http://www.copyright.com/>

Copyright Law of the United States (Copyright Act of 1976 and amendments), United States Copyright Office <http://www.copyright.gov/title17/>

- Section 106: Exclusive rights in copyrighted works
<http://www.copyright.gov/title17/92chap1.html#106>
- Section 107: Fair use
<http://www.copyright.gov/title17/92chap1.html#107>
- Section 108: Reproduction by libraries and archives
<http://www.copyright.gov/title17/92chap1.html#108>
- Section 110: Exemption of certain performances and displays (classroom exemption provision)
<http://www.copyright.gov/title17/92chap1.html#110>

Digital Future Coalition
<http://www.dfc.org/>

Digital Millennium Copyright Act [PDF] (1998), United States Copyright Office
<http://www.copyright.gov/legislation/hr2281.pdf>

University of Texas

- Fair Use of Copyrighted Materials, University of Texas System
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>
- Four Factor Fair Use Test
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm#test>
- Guidelines For Classroom Copying of Books and Periodicals [adapted]
<http://www.utsystem.edu/ogc/intellectualproperty/clasguid.htm>

Professional Guidelines & Policies, The Consortium of College and University Media Centers (CCUMC)

<http://www.indiana.edu/~ccumc/copyright/guidelines.html>

Regents Guide to Understanding Copyright & Educational Fair Use, University System of Georgia

<http://www.usg.edu/admin/legal/copyright/#part2>

Report on Copyright and Digital Distance Education (CONFU Educational Fair Use Guidelines for Distance Learning), United States Copyright Office [PDF]

<http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

Reproduction of Copyrighted Works by Educators and Librarians [PDF] (Circular 21), United States Copyright Office

<http://www.copyright.gov/circs/circ21.pdf>

[Guidelines agreed to by the Association of American Publishers and The Author's League of America]

The TEACH Act [PDF], U.S. Senate Report 107-31, June 5, 2001.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_reports&docid=f:sr031.107.pdf

The TEACH Toolkit, North Carolina State University Libraries

<http://www.lib.ncsu.edu/scc/legislative/teachkit/>

United States Copyright Office

<http://www.copyright.gov/>

What College and Universities Need to Know about the Digital Millennium Copyright Act, EDUCAUSE

<http://www.educause.edu/ir/library/html/cem/cem99/cem9913.html>