

Chapter: General Administration

Modification No. 002Subject: **Use of Copyrighted Materials**

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- I. In recognition of its mission to further teaching, learning and research and engage in public service, the College is committed to fostering an environment that provides for the fair use of copyrighted works to achieve these goals while remaining in compliance with applicable laws.
 - II. Therefore, it is the policy of the Board of Trustees to comply with federal copyright law and all related law codified at 17 U.S.C. §101 et seq. Users of copyrighted works are accorded the rights and privileges pursuant to 17 U.S.C. §§107 (Fair Use), 108 (Reproduction by Libraries and Archives), 109 (First Sale Doctrine and Transfers), 110 (Teaching Exception) and other statutory exemptions and limitations to the exclusive rights granted to the owner of a copyright protected work. The intent of this policy is to not unduly restrict the use of works otherwise permitted under law.
 - III. This policy shall apply to the use of copyrighted materials (in all formats, including digital) for teaching, learning, research, administrative, and other purposes by all students, employees, contractors, and other individuals who use any College owned or leased equipment and/or facilities and to students, employees, and other individuals who use off-campus non-College facilities and/or equipment in connection with College related activities or on behalf of the College. "Fair Use" shall not be abused. Students, employees and other individuals subject to this policy are expected to obtain permission from the copyright owners unless the intended use is clearly permitted under the doctrine of "fair use." The College does not condone copying/reproducing instead of purchasing copyrighted works where such copying/reproducing would constitute copyright infringement.
 - IV. Students, employees and other individuals subject to this policy who use material originated by others shall not, as a matter of policy, when using such materials, infringe on those rights of the originator which are protected by copyright laws and shall secure permission to use or reproduce copyrighted works when such permission would be required under copyright law and/or pay royalties when such payment would be required.
 - V. To achieve these ends, it is the policy of the College to inform and educate faculty, students, employees, contractors, and visitors regarding federal copyright law, the rights of copyright owners, the legal obligation of the College to comply with applicable law, and the rights of the College community to use copyrighted works.
 - V. This policy is not intended to waive any rights, remedies, immunities or defenses available to the College in the event of an infringement or alleged infringement of the copyright law and such rights, remedies, immunities and defenses are specifically reserved.
 - VI. The President is authorized to establish procedures to implement this policy.

Board Approval: May 15, 1989; December 12, 2016.

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Modification No. 001Subject: **Use of Copyrighted Materials**

I. Introduction

The purpose of these procedures is to implement Board policy regarding compliance with federal copyright law and all related law codified at 17 U.S.C. §101 et seq., and provide guidance to the College community regarding the use of copyrighted materials (in all formats, including digital) for teaching, learning, research, administrative, and other purposes by all students, employees, and other individuals.

II. Definitions

- A. **Copyright:** Copyright protection subsists as original creative works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and, architectural works. In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.
- B. **DMCA:** The Digital Millennium Copyright Act became law on October 28, 1998 in an attempt to address copyright-related issues overlooked in the United States Copyright Act of 1976, including those related to the presentation of digitally stored and produced materials and presentations on the Internet. The DMCA has anti-circumvention and copyright management information provisions to assist copyright owners in protecting their digital content.
- C. **Duplication:** Reproducing or copying material by any means including, but not limited to, writing, typing, photocopying, scanning, facsimile, downloading, and video, DVD or audio recording.
- D. **Face-to-Face Teaching:** An educator engaged in an instructional activity. The activity must take place in a classroom, must be part of systematic instruction, and the class must be comprised of registered students and/or faculty and staff.
- E. **Fair Use:** The right to use copyrighted materials without consent of the copyright owner, usually for scholarship, teaching, research, or criticism. There are four factors to consider in determining whether a particular use is fair use. These four factors are: (a) purpose and character of the use, including whether it is for commercial use or for nonprofit educational purposes; (b) nature of the copyrighted work; (c) amount and substantiality of the portion used in relation to the copyright-protected work as a whole; and, (d) the effect of the use on the potential market for or value of the copyright-protected work.

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- F. **Multimedia:** A production involving more than one medium (i.e., a combination of text, pictures, sound, graphics, film-clips, etc.).
 - G. **Open Access:** Open Access is the immediate, online, free availability of research outputs without the severe restrictions on use commonly imposed by publisher copyright agreements. (OASIS – Open Access Scholarly Information Sourcebook)
 - H. **Public Domain:** Works not protected by copyright or works created by the federal government. Works published before 1923 are considered to be in the public domain.
 - I. **Public Performance Rights:** 17 U.S.C. §101 of the copyright law states that a performance is public if it is in a public place or if it is in any place where "a substantial number of persons outside of a normal circle of a family and its acquaintances" is gathered. Thus, the factors to consider in determining whether a performance is public include whether the place is public and the size and composition of the audience. Some videos and DVD's include public performance rights as part of the purchase. 17 U.S.C. §110, states that performances that take place in the face-to-face teaching activities of a nonprofit educational institution are not an infringement of the copyright owner's right.
 - J. **Publication:** "Publication" is the distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies 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.
 - K. **TEACH Act:** The Technology, Education, and Copyright Harmonization (TEACH) Act is a distance education update of copyright law. The TEACH Act facilitates and enables the display of copyrighted materials for distance education by accredited, non-profit educational institutions. Its primary purpose is to balance needs of educators and distance learners with the rights of copyright owners. The TEACH Act is relevant only if the materials in question are protected under copyright law and does not apply to what is in the public domain, or not protected by copyright. The TEACH Act is potentially applicable to any "transmission" of copyrighted content to students, e.g., formal distance education classes or materials posted on a server. The TEACH Act is relevant only to transmissions. A "digital transmission" is a transmission in whole or in part in a digital or other non-analog format.

III. Scope and Applicability

These procedures shall apply to the use of copyrighted materials by all students, employees, contractors, and other individuals who use any College owned or leased equipment and/or facilities and to students, employees, and other individuals who use off-campus non-College facilities and/or equipment in connection with College related activities or on behalf of the College. College users of copyrighted works are accorded the rights and privileges pursuant to 17 U.S.C. §§107 (Fair Use), 108 (Reproduction by Libraries and Archives), 109 (First Sale Doctrine and Transfers), 110 (Teaching Exception) and other statutory exemptions and limitations to the exclusive rights granted to the owner of a copyright protected work.

IV. Exemptions

There are certain circumstances under which it is permissible to exercise one of the exclusive rights of the copyright owner without first obtaining permission. Unless one of the following examples applies, permission must be granted prior to use.

A. Fair Use

1. Copyrighted materials may be used without the copyright owner's permission where such use or copying constitutes "fair use" under 17 U.S.C. §107 (Fair Use).
2. Determining whether a proposed use constitutes "fair use" involves applying a four-point test established by copyright law. The four points are:
 - a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - b. The nature of the copyrighted work;
 - c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - d. The effect of the use upon the potential market for or value of the copyrighted work.
3. Examples of Fair Use include:
 - a. Quotation of excerpts in a review or criticism for purposes of illustration or comment;
 - b. Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations;
 - c. Reproduction of material for classroom use where the reproduction was unexpected and spontaneous—for example, where an article in the morning's paper is directly relevant to that day's class topic;
 - d. Use in a parody of short portions of the work itself; and
 - e. A summary of an address or article, which may include quotations of short passages of the copyrighted work.
4. The Libraries provides guides and other resources to assist faculty with this process. Any time there is any doubt about whether something meets the Fair Use criteria, please contact the Libraries for assistance.

B. Public Domain

The limitations and conditions set forth in these procedures do not apply to works in the public domain, such as:

1. Works for which the author is a government entity, including United States Government Documents.
2. Works on which copyright has expired, generally those published before 1923.

C. Licensed Works

1. Works for which the individual or Montgomery College obtains permission for a particular use.
2. License agreements govern the uses of these works and users should refer to the applicable license terms.

D. Open-Access Resources

1. Open access (OA) refers to online research outputs that are free of all restrictions on access (e.g., access fees) and free of many restrictions on use (e.g. certain copyright and license restrictions). Two degrees of open access can be distinguished: online access free of charge, and online access free of charge plus various additional usage rights. These additional usage rights are often granted through the use of various specific [Creative Commons](#) licenses.
2. Open Educational Resources (OERs) are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use by others. Open educational resources can include full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge.

V. General Procedures

A. Copying and Duplication

1. Faculty, students, and employees may copy or duplicate copyrighted materials without express permission within the fair use guidelines (see Section IV, A, 2 above).
2. To duplicate materials where copying is not fair use, permission must be obtained from the copyright owner, and an individual must seek permission each time the material is used.
3. Faculty should consult MC Copies for developing course packs.

B. Course Reserves

1. Course Reserves are initiated by Faculty and the Libraries for the use of students. Course Reserves can be both in print and multimedia formats. Use of Course Reserves is covered by 17 U.S.C. §§ 107 & 108.
2. Faculty may place original format copyrighted materials on reserve in the Libraries. The use of library owned materials does not exclude the necessity of obtaining copyright permission. If the Libraries do not own an original, Faculty may place a duplication of a copyrighted work on reserve only once under Fair Use. Successive use of the photocopy requires the Libraries to obtain permission from the copyright holder.
3. The Libraries do not rent or lease or place rented material on reserve.

C. Interlibrary Loan

The [Montgomery College Library's' Interlibrary Loan \(ILL\)](#) office follows CONTU (Commission on New Technological Uses of Copyrighted Works) guidelines.

D. College-Approved Learning Management System

1. Title 17 U.S. Code governs the rights attributed to owners of copyrighted work. Under certain circumstances, educational institutions may provide copies of copyrighted works to students. The copies may not be copied nor used for any other purpose besides private study, scholarship, or research. Users should not provide electronic copies of any materials provided on a course's site to unauthorized users. If a user fails to comply with Fair Use restrictions, he/she may be held liable for copyright infringement. No further transmission or electronic distribution is permitted.
2. The following are general guidelines that employees and students should always consider when posting material to the college's learning management system:
 - a. Only post materials for non-profit, educational use.
 - b. Always include the proper attributions and citations for all posted materials.
 - c. All users must use best efforts to retrieve permission from the copyright owners of any material posted.
 - d. Whenever possible, faculty should post a link to a website instead of posting a copy of the website's content. If linking to a website is not possible, faculty should consider adding the material to Course Reserves. Faculty should never post the entirety of a copyrighted work without the copyright owner's express permission (e.g., faculty should not upload an entire book). The chart provided in Appendix I provides guidance.
 - e. Access to materials on the college's learning management system must be limited to authorized users only for as much time

as may be required. Once the need for the materials is no longer necessary, access to any posted materials should be restricted.

E. Media (including all audio visual formats)

Title 17 U.S.C. protects producers and distributors of motion pictures, audio recordings, DVD's and videotapes. The fair use provision in 17 U.S.C. resulted in a consensus among producers, distributors, educators, and lawyers concerning the recording, retention, and use of television programs by nonprofit educational institutions. All MC employees, faculty, or students may not use college facilities or equipment to show media which they did not legally obtain.

1. Rented or Purchased Media

Title 17 U.S.C makes a distinction between face-to-face classroom use and public performance.

a. Face-to-Face Classroom Use

- 1) Employees and students may use media legally purchased or rented for instructional purposes in the classroom.
- 2) The Libraries may purchase media with educational use rights for use in the classroom if the subject matter covered in the media aligns with the scope of the Libraries' collection development policy. Media with such rights are purchased, not rented, with the Libraries retaining ownership.

b. Public Performance

- 1) If a film/media presentation is to be open to more than registered students, faculty, and staff, it falls under the rules for public performance and Public Performance Rights (PPR) must be obtained.
- 2) PPR information can be found by contacting distributors directly or when renting a film or video through a leasing company that provides PPR as part of the lease agreement. The Libraries do not purchase materials for PPR.
- 3) Students and student groups who wish to show media, should contact the Office of Student Affairs. Employees should contact their respective departments.

2. Recording of College Events - Permissions

- a. The College assumes permission to record presentations by registered students and employees if the recording is for classroom use only.

- b. Written permission by each presenter is required for presentations made by any other individual or group regardless of the recording's purpose. The MCTV Talent Release form is available on the Montgomery College Television webpage.
- c. If a presentation contains copyrighted material(s), permission to use the copyrighted material(s) in the recording must be obtained prior to recording by the presenter, or the group doing the recording will need to exclude the portions of the presentation with copyrighted information from any final recorded products. The Materials Release form, located on the Montgomery College Television webpage, must be completed by the presenter two business days in advance when the recording will be conducted by Montgomery College Television.
- d. Non-College entities who intend to record students, activities, events, etc. on College property must be approved in advance by the Vice President of Communications.

3. Performed Music/Use of Music

- a. Music involves a number of different licensing requirements and authorizations depending upon the use. Employees and students who wish to use published or copyrighted music should obtain permissions prior to performing, copying, or using any music for instruction, presentations, or any public performance.
- b. All Montgomery College employees and students should be aware that electronic sharing of copyrighted music files is an infringement of Copyright law and may result in disciplinary action under the appropriate College policy as well as legal penalties.

4. Off-Air Recordings

In most instances recording broadcast over channels normally received free (e.g., with a normal antenna) is not usable for educational purposes or public performances since it violates the rights of the copyright owner. Montgomery College adheres to the following guidelines for off-air recordings and videos recorded by an individual:

- a. Employees will not record programs in anticipation of a request.
- b. The Libraries will not add off-air recordings to their collection.

F. TEACH ACT

- 1. The TEACH Act allows for a limited number of articles to be posted electronically on a web site as long as each article is integral to the course. This means that each posted reading must be required reading, rather than suggested reading.

2. Montgomery College adheres with the TEACH Act and therefore requires all faculty teaching distance education courses or faculty who use the college's learning management system to supplement face-to-face instruction to comply with the following guidelines when proposing to digitize readings, images, text, graphics, etc., for a web site hosted by a college server and accessed by students registered in a course of study taught Montgomery College:
 - a. Post only individually created course syllabi, study sheets, sample exams, etc., on your department or course web site (i.e., CMS, Blackboard, or any open source courseware).
 - b. If using any works not self-authored, contact the Libraries for assistance in obtaining permission requests, including all applications for Distance Learning.
 - c. The Libraries' electronic Course Reserves service was created to relieve users of the responsibility of seeking permissions to digitize copyrighted readings or images, etc., for students to access remotely. In fact, many journals are already licensed for use by Montgomery College students and faculty via databases to which the Libraries subscribes. It is best practice to link directly to this material rather than provide copies.
 - d. Access to copyrighted materials must be limited to authorized users only for as much time as may be required. Once the need for the materials is no longer necessary, access to any posted materials should be restricted.
3. Examples of items that may need permission requests include:
 - a. Online articles from newspapers, journals, and other periodicals not licensed by Montgomery College Libraries.
 - b. Print copies AND online versions inaccessible through Montgomery College.
 - c. Any writings found online not accompanied by an explicit permission grant or Creative Commons license, (e.g., "Please copy freely for educational use.").
 - d. Copyrighted images scanned from books, journals, or other web sites.
 - e. Video and audio segments from videos taped by individuals, purchased by individuals, rented from a video store, or borrowed from Montgomery College Libraries.
4. Contact the Office of E-Learning, Innovation and Teaching Excellence (ELITE) or the Libraries for assistance.

VI. Violations and Sanctions

A. Digital Millennium Copyright Act (DMCA)

1. Pursuant to the DMCA, the College has a registered agent designated to receive notices of alleged infringement and to take certain actions in response to such notices.
2. All investigations of DMCA violations will be handled by the Information Technology Policy Administrator (ITPA), pursuant to College Policy and Procedure 76001-Acceptable Use of Information Technology.

B. General Violations

Any person, including but not limited to an employee, student, contractor, facility user, or visitor, who uses any College electronic resource or equipment or uses offsite electronic resources or equipment for College business in violation of this policy and procedure shall be subject to disciplinary action including termination (for employees), dismissal (for students), loss of privileges (for all persons), and/or referral to the appropriate authorities for prosecution to the fullest extent of the law.

VII. Education

Education is a key element of this procedure. The College will provide education and information, as appropriate, for students and employees to enhance understanding and increase awareness of the College's Copyright Policy and Procedures. Any mandatory education requirements will be announced and posted on the College's website. The President is authorized to provide institutional leadership and guidance for developing education programs to increase knowledge and share information and resources to prevent copyright violations. Some goals to be achieved through education are: (a) creating a heightened awareness of basic copyright law; (b) notifying individuals of conduct that is proscribed; (c) informing employees, students, and other members of the college community about the proper use of copyrighted materials; and (d) preventing issues related to copyright infringement.

Administrative Approval: December 13, 2016

Appendix I – Blackboard Posting Guidelines

Item	Permitted Use	Prohibited Use
Website (containing copyrighted material)	Link to the Website via Blackboard.	Copying and pasting the content of the website onto Blackboard.
Web Image	Must be educational in nature; posted for one semester.	Repeated use over multiple semesters.
Article from E-Reserves or Other Library Database	Direct link to the article.	Copying and pasting the content of the website onto Blackboard.
Complete Prose Work	Must be educational in nature and under 2,500 words.	Repeated use over multiple semesters; posting a work over 2,500 words.
Scanned Portion of a Prose Work	Must be educational in nature and only a portion of the work may be used.	Repeated use over multiple semesters or use of more than the allotted percentages.
Scanned Article from a Journal, Trade Publication, or Magazine	A single article for one semester.	Multiple articles from the same publication or repeated use over multiple semesters.

(Adapted from GWU Libraries, with edits)