

Tarrant County College District

Copyright Policy

Understanding Copyright Laws

A copyrightable work is any work that is original and has some degree of creativity. Section 102 of the U. S. Copyright Act of 1976 states simply: “Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression” (U. S. Copyright Act, 17 U.S.C., Section 102(a)).

The intent of the law is to protect the rights of creators and producers of intellectual property and their heirs and assignees. In the U. S., copyright no longer requires registration or notice. That is, as soon as a work is placed in a “tangible medium of expression,” copyright exists in the work. Certain exemptions (fair use) have been made to facilitate the use of information in educational settings. The guidelines which follow are intended to clarify the use of copyrighted materials at Tarrant County College District.

Copyright is a form of protection provided by the laws of the United States to the authors of “original works of authorship,” including literary, dramatic, musical, artistic and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords.**
- To prepare derivative works based upon the work.**
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease or lending.**
- To perform the work publicly, in the case of literary, musical, dramatic and choreographic**

works, pantomimes and motion pictures and other audiovisual works.

- **To display the work publicly, 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.**
- **In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.**

It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 122 of the 1976 Copyright Act establish limitations on these rights. In some cases, these violations are specified exemptions from copyright liability. One major limitation is the doctrine of “fair use,” which is given a statutory basis in section 107 of the 1976 Copyright Act. In other instances, the limitation takes the form of a “compulsory license” under which certain limited used of copyrighted works are permitted upon payment of specified royalties and compliance with statutory conditions.

WHAT WORKS ARE PROTECTED?

Copyright protects “original works of authorship” that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it is communicated with the aid of a machine or device. Copyrightable works include the following categories:

- 1. Literary works**
- 2. Musical works, including any accompanying words**
- 3. Dramatic works, including any accompanying music**
- 4. Pantomimes and choreographic works**
- 5. Pictorial, graphic and sculptural works**
- 6. Motion pictures and other audiovisual works**
- 7. Sound recordings**
- 8. Architectural works**

These categories should be viewed broadly. For example, computer programs and most “compilations” may be registered as “literary

works” while maps and architectural plans may be registered as “pictorial, graphic and sculptural works”.

WHAT WORKS ARE NOT PROTECTED

Several categories of material are generally not eligible for federal copyright protection. These include among others:

- 1. Works that have not been fixed in a tangible form of expression such as choreographic works that have not been notated or recorded, or improvisational speeches or performances that have not been written or recorded.**
- 2. Titles, names, short phrases and slogans; familiar symbols or designs; mere variations of typographic ornamentation; lettering or coloring; mere listings of ingredients or contents.**
- 3. Ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices as distinguished from a description, explanation or illustration.**
- 4. Works consisting entirely of information that is common property and containing no original authorship such as standard calendars, height and weight charts, tape measures and rulers and lists or tables taken from public documents or other common sources.**

PUBLIC DOMAIN

The rules for determining whether a protected work is in the public domain are complex and somewhat hard to describe, partly because they have changed many, many times. The general rules (excluding anonymous works and works for hire) can be summarized as follows:

Any work published on or before December 31, 1922, is now in the public domain.

Works published between January 1, 1923 and December 31, 1978, inclusive, are protected for a term of 95 years from the date of publication, with the proper notice. If the work was published between 1923 and December 31, 1963, when there used to be a (non-automatic) “renewal term,” the copyright owner may not have renewed the work.

If they did not renew, the original term of protection (28 years) would now be expired and these works will be in the public domain.

After 1978, the way we measure the term of protection changes. It is no longer related to a date of publication, but rather runs for 70 years from the date the author dies (called “life of the author” plus 70 years). Further, publication is irrelevant. Works are protected whether they are published or not.

Finally, those works that were created before December 31, 1978, but never published, are now protected for the life of the author plus 70 years.

It is the responsibility of the user of intellectual property to ascertain the valid holder of copyright and to adhere to the copyright law.

FAIR USE

Fair use guidelines provide for a certain amount of individual discretion in the use of copyrighted material. Students, for example, are generally accorded wide latitude in the use of materials for class projects, assignments, papers, etc. because their creations are private, are not for sale, are not publicly performed and do not harm the potential market value of the work. Instructors may copy a wide variety of material for use in the classroom and to assist in research. The law protects the copyright holder by prohibiting copying which harms the potential market of the work, i.e. to substitute for anthologies or to substitute for workbooks. It should also be noted that the District may have contracts with industry organizations which determine certain rights and responsibilities with regard to some forms of copyrighted material (ASCAP, BMI, SESAC for recordings; theatrical agencies for dramatic works).

District service units (the Copy Center, Media Services, the Library, etc.) are liable for any reproductions which they carry out and therefore reserve the right to question, to defer and to refuse requests for services which appear to violate copyright and, therefore, place the District at risk of infringing the copyright law.

FAIR USE INFORMATION FOR FACULTY

The issue of just what is fair use of copyright-protected materials comes up often in education circles. Fair use is the most significant limitation on the copyright holder's exclusive rights. Deciding whether the use of a work is fair not a science. There are no set guidelines that are universally accepted. Instead, the individual who wants to use a copyrighted work must weigh four factors:

1. The purpose and character of the use:

Is the new work merely a copy of the original? If it is simply Copy, it is not as likely to be considered fair use.

Does the new work offer something above and beyond the original? Does it transform the original work in some way? If the work is altered significantly, used for another purpose, appeals to a different audience, it is more likely to be considered fair use.

Is the use of the copyrighted work for nonprofit or educational purposes? If so, it is more likely to be considered fair use.

2. The nature of the copyrighted work:

Is the copyrighted work a published or unpublished work? Unpublished works are less likely to be considered fair use.

Is the copyrighted work out of print? If so, it is more likely to be considered fair use.

Is the work factual or artistic? The more a work tends toward artistic expression, the less likely it will be considered fair use.

3. The amount and substantiality of the portion used:

The more you use, the less likely it will be considered fair use.

Does the amount you use exceed a reasonable expectation? If it approaches 50 per cent of the entire work, it is likely to be considered an unfair use of the copyrighted work.

Is the particular portion used likely to adversely affect the author's economic gain? If you use the "heart" or "essence" of a work, it is less likely your use will be considered fair.

4. The effect of use on the potential market for the work:

The more the new work differs from the original, the less likely will be considered an infringement.

Does the work appeal to the same audience as the original?

If the answer is yes, it will likely be considered an Infringement.

Does the new work contain anything original? If it does, it is more likely the use of the copyrighted material will be seen as fair use.

Make sure the use is for education in a nonprofit educational setting. The use also has to be germane to the instruction of the topic. Don't show a movie just for entertainment or as a "reward".

Make sure that you legally obtain the copy. Even if it is used for educational purposes, a bootleg copy of a video is still illegal. When possible use factual works but when necessary, dramatic works can be used to illustrate a point or as a basis for criticism or commentary. Factual works are usually more in the public domain or have more fair use applications. Dramatic works are more heavily protected by copyright. You may also use excerpts from periodicals but make sure that a copyright notice appears on each copy. It is a good idea to follow the copyright guidelines for photocopying.

Unless you are teaching a course on a specific author, it is not a good idea to use too many items from one author. Also, according to the guidelines, you need to either obtain permission or use another author after two years.

Finally, use of copyright-protected material should not be a substitute for students purchasing textbooks or other books readily available in the market place. One of the key components of copyright is the effect of use on the marketability of the work. Does your use dilute the market or potential sales of the copyright holder? If it does then you are infringing on the copyright holders' rights. Limit your use of copyright protected works to those in your classes and the immediate educational community.

LICENSING

It is important to remember that any license you enter into with a publisher overrules basic copyright provisions. For example, under copyright law it is illegal to copy from tests or other “consumables”. However, a textbook publisher will often grant permission to copy tests from test banks if you have adopted the textbook. Likewise, almost all computer software comes with separate licensing agreements that puts limits on uses that might have been acceptable under the Fair Use clause.

PERMISSION

Finally, remember that you can ask for (and often obtain) permission to use copyright-protected materials for your courses. It is important to first identify what material you wish to use, how much and why. Then contact the publisher and request permission for that specified use. You may also contact the office of the TCCD Copyright Compliance Advisor for assistance.

PUBLIC PERFORMANCE

The concept of “public performance” is central to copyright. The circumstances that constitute public performance are clearly defined in the law: “A place open to the public or any place where a substantial number of persons outside of a normal circle of a family or its social acquaintances are gathered.”

The Federal Copyright Act (Title 17, United States code, Public Law 94-553, 90 Stat. 2541) governs how copyrighted materials, such as movies, may be utilized publicly. Neither the rental nor the purchase or lending of a video carries with it the rights to exhibit such a movie publicly outside the home, unless the site where the video is used is properly licensed for copyright compliant exhibition.

This legal copyright compliance requirement applies to colleges, universities, public schools, public libraries, daycare facilities, parks, recreation departments, summer camps, churches, private clubs, prisons, lodges, businesses, etc., REGARDLESS OF WHETHER ADMISSION IS CHARGED, whether the institution is commercial or non-profit or whether a federal, state or local agency is involved.

The movie studios that own copyrights, and their agents, are the only parties who are authorized to license sites such as colleges and universities. No other group or person has the right to exhibit or license exhibitions of copyrighted movies. Furthermore, copyrighted movies borrowed from other sources such as public libraries, colleges, personal collections, etc. cannot be used legally for showings in colleges or universities or in any other site which is not properly licenses.

Tarrant County College District has entered into an agreement with Swank Motion Pictures, Inc. to rent movies at a discounted rate for public performance. Contact the TCCD Copyright Compliance Advisor to obtain these movies. No other person or persons has authority to rent movies for showing at any TCCD facility.

THE FACE-TO-FACE TEACHING EXEMPTION

Section 110 of the 1984 Copyright Act does provide a specific exemption to the licensing of what is clearly a public performance: face-to-face teaching. To qualify for the exemption, the showing must occur in a face-to-face teaching situation at a non-profit institution and meet all of the following six criteria:

- 1. Performances and displays of media must be made from legitimate sources, such as pre-recorded videocassettes or DVDs. Copies from legitimate sources (bootlegs) or broadcasts are not allowed.**
- 2. Performances and displays must be part of a systematic course of instruction and not for entertainment, recreation or cultural value. The instructor should be able to show how the use of the motion picture contributes to the overall course study and syllabus. The course does not have to be a credit course, but must be one recognized by the institution and for which students must register.**
- 3. The instructors or students must give performances and displays from the same location in which it is being screened; no broadcasting from outside sources (such as closed-circuit television) is allowed.**

- 4. Performances and displays must be given in classrooms and other places devoted to instruction; library screening rooms, residence hall lounges, cafeterias, etc. do not qualify.**
- 5. Performances and displays must be a part of the teaching activities at a non-profit educational institution. Businesses that conduct educational seminars and certain technical schools do not qualify.**
- 6. Attendance is limited to the instructors, students and guest lecturers. Only students registered for the class may attend the screening. No fee specific to the screening may be charged.**

FAIR USE INFORMATION FOR STAFF

Use of copyright-protected work by staff in a non-teaching situation could fall within Fair Use. To determine if the work falls under fair use in a non-teaching situation, ask yourself these following questions:

Is the use for news, criticism, commentary and parody or in some other way “transformative” such as quotations used in a paper or short clips in a multimedia production?

If your answer is “yes” then fair use is strongly in your favor.

Is the copyright-protected work fiction, non-fiction or a personal expression?

If your answer is “yes” then your fair use is more limited.

How much of the copyright-protected work is to be used? Also, what portions of the work will be used?

The less you use the greater fair use weighs in your favor.

Is the copyright-protected work available for purchase?

If it is for sale, even if you cannot afford the price then you do not have fair use rights without permission.

One of the key misconceptions concerning copyright is that of purchase. Many people believe that if they purchase a book or video recording then they have the right to do with it what they want. However, buying a book, video recording or music CD only gives the

purchaser limited rights to content. Those rights are limited to viewing and in some cases reproduction for archival purposes. Purchasing a book, video recording or music CD does not give you the right to perform or display it publicly.

THE DIGITAL MILLENNIUM COPYRIGHT ACT

The Digital Millennium Copyright Act (DMCA) was signed into law in 1998. The law was an attempt to bring United States copyright law in line with world copyright treaties and to address some of the issues dealing with digital content. The law is broken down into 5 “titles”. The most important for educators are Titles 1, 2 and 4.

Title 1

Title 1 contains a provision that prohibits the implementation of technological means of circumventing copy protection measures. Specifically, it outlaws measures that:

- Are primarily designed or produced to circumvent.**
- Have only limited commercially significant purpose or use other than to circumvent.**
- Are marketed for use in circumventing.**

There are exceptions made for nonprofit libraries and educational institutions. These exceptions include circumvention for the sole purpose of determining if you wish to obtain full authorized access to the work. In addition, there are provisions for:

- Reverse engineering of computer programs to achieve interoperability.**
- Encryption research to identify flaws and vulnerabilities.**
- Incorporation of circumvention in order to prevent minor’s access to harmful materials on the internet.**
- Circumvention to remove private information from being collected and disseminated online.**
- Circumvention for the purpose of testing security of a computer, computer system or network.**

Title 1 also established stiff fines and even jail penalties for willful violation of these provisions.

Title 2

Title 2 is also called the Online Copyright Infringement Liability Limitation Act (OCILLA) and sets limits of liability of internet service providers. Since most colleges run their own internet services, they are in fact ISP's. In order to maintain this protection, ISP's must act as soon as they are notified of an infringement.

TCC maintains its limited liability as long as:

- **It does not have actual notice of the infringing activity or knowledge of circumstances from which infringing activity is apparent or, if it becomes aware of such acts, expeditiously to remove it.**
- **It does not receive a financial benefit from the infringing activity.**
- **Upon notice of the infringing activity, it responds expeditiously to remove or disable the material.**

Title 4

Title 4 or the DMCA contains 6 “miscellaneous provisions.” The ones that will interest educators the most are:

2. c. which adds webcasting to the protected performance rights of the copyright holder. In other words you do need a license or permission to webcast copyright protected audio, including music.

3. which required the Copyright Office to report to Congress on the promotion of distance education. This has led to the TEACH Act and the November 2006 ruling from the Library of Congress that expanded the works exempted from the circumvention statute to 6 additional special cases:

- **Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances: educational uses by colleges and**

university professors and by college and university film and media studies students; documentary filmmaking; noncommercial videos.

- **Computer programs that enable wireless telephone handsets to execute software applications, where circumvention is accomplished for the sole purpose of enabling interoperability of such applications, when they have been lawfully obtained, with computer programs on the telephone handset.**
- **Computer programs, in the form of firmware or software, that enable used wireless telephone handsets to connect to a wireless telecommunications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network.**
- **Video games accessible on personal computers and protected by technological protection measures that control access to lawfully obtained works, when circumvention is accomplished solely for the purpose of good faith testing for, investigating, or correcting security flaws or vulnerabilities , if: the information derived from the security testing is used primarily to promote the security of the owner or operator of a computer, computer system or computer network; the information derived from the security testing is used or maintained in a manner that does not facilitate copyright infringement or a violation of applicable law.**
- **Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete. A dongle shall be considered obsolete if it is no longer manufactured or if a replacement or repair is no longer reasonably available in the commercial marketplace.**
- **Literary works distributed in ebook format when all existing ebook editions of the work (including digital text editions made available by authorized entities) contain access controls that prevent the enabling either or the book's read-aloud function or of screen readers that render the text into a specialized format.**

Lastly, grants nonprofit libraries the right to make back-up copies that transform audio to newer technology and aids in preservation.

Glossary:

Dongles- a small hardware device that, when plugged into a computer, enables a specific copy-protected program to run, the program being disabled on that computer if the device is not present. The device is effective against software piracy.

Firmware- software stored on a memory chip in a computer or computer device instead of being part of a program.

THE TEACH ACT

The Technology, Education and Copyright Harmonization Act was signed into law in 2002. It is the product of discussion and negotiation among academic institutions, publishers, library organizations and Congress.

Although copyright law generally treats digital and non-digital copyright-protected works in a similar manner, special digital uses, such as online distance learning and course management systems, require special attention. Some of the special copyright requirements of online distance learning are specifically addressed by the TEACH Act.

The TEACH Act facilitates and enables the performance and display of copyrighted materials for distance education by accredited, non-profit educational institutions (and some government entities) that meet the TEACH Act's qualifying requirements. Its primary purpose is to balance the needs of distance learners and educators with the rights of copyright holders. The TEACH Act applies to distance education that includes the participation of any enrolled student, on and off campus.

Under the TEACH Act:

- Instructors may use a wider range of works in distance environments.**
- Students may participate in distance learning sessions from virtually any location.**

- **Participants enjoy greater latitude when it comes to storing, copying and digitizing materials.**

Requirements of the TEACH Act:

In exchange for unprecedented access to copyright-protected material for distance education, the TEACH Act requires that academic institutions meet specific requirements for copyright compliance and education.

In order for the use of copyrighted materials in distance education to qualify for the TEACH Act exemptions, the following criteria must be met:

- **The institution must be an accredited, non-profit educational institution**
- **The use must be part of mediated instructional activities.**
- **The use must be limited to a specific number of students enrolled in a specific class.**
- **The use must either be for “live” or asynchronous class sessions.**
- **The use must not include the transmission of textbook materials, materials “typically purchased or acquired by students,” or works developed specifically for online uses.**
- **Only “reasonable and limited portions,” such as might be performed or displayed during a typical live classroom session, may be used.**
- **The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials.**
- **The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut and paste disabling, etc.**

What the TEACH Act Does Not Allow

The new exemptions under the TEACH Act specifically *do not* extend to:

- **Electronic reserves, coursepacks (electronic or paper) or interlibrary loan (ILL).**
- **Commercial document delivery.**
- **Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.**
- **Conversion of materials from analog to digital formats, except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures.**

It is also important to note that the TEACH Act does not supersede fair use or existing digital license agreements.

Ultimately, it is up to each academic institution to decide whether to take advantage of the new copyright exemptions under the TEACH Act. This decision should consider both the extent of the institution's distance education programs and its ability to meet the education, compliance and technological requirements of the TEACH Act.

Guidelines For Using Content

PHOTOCOPYING

Guidelines for Classroom Copying with Respect to Books and Periodicals

The following excerpts are reprinted from the Circular 21: Reproduction of Copyrighted Works by Educators and Librarians (Section C, 2B, ii, Page 7).

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107. This statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall

within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at their individual request for their scholarly research or use in teaching or preparation 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, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper**

Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per student in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- **The copying meets the tests of brevity and spontaneity as defined below**
- **Meets the cumulative effect test as defined below**
- **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 which 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 a 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.**
- (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.

Prohibitions to I and II above

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

- **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 therefore are accumulated or reproduced and used separately.**
- **There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.**
- **Copying shall not: (a) substitute for the purchase of books, publisher’s reprints or periodicals; (b) be directed by higher authority; (c) be repeated with respect to the same item by the same teacher from term to term.**
- **No charge shall be made to the student beyond the actual cost of the photocopying.**

Electronic Reserves (E-Reserves)

Electronic Reserves is an extension of traditional library reserves and is managed in accordance with fair use exclusions and the rights of copyright holders as embodied in the current copyright law. TCC will not place materials on electronic reserve without permission of the copyright holder if the nature, scope or extent of copying exceeds the reasonable limits of fair use.

Which Materials Do Not Require Copyright Permission?

- **Material in the public domain**
- **Materials like personal lecture notes or sample exams**
- **Materials for which the instructor holds the copyright**

Guidelines For Placing Copyrighted Materials On E-Reserves.

- **All materials placed on E-Reserves will be solely for the non-commercial, educational use of students. Longer works, such as complete books, will not be placed on E-Reserves.**
- **Copyright notice will appear on the viewing screen of Library Catalog E-Reserves display.**
- **Appropriate copyright attribution will be entered on the material itself if it does not already appear.**
- **Access to E-Reserves will be limited to authenticated TCC Library users.**
- **Instructors will obtain copyright permission from the copyright holder if the material is to be on E-Reserve for more than one semester and will provide a copy of the permission to the Library.**

DIGITAL CONTENT

Digital or electronic content, such as e-books, photographs on Web sites and electronic databases are subject to the same protections under the Copyright Act as non-digital, traditional or analog works. In addition, there are specific provisions relating to digital content in the 1998 amendment to the Copyright Act by the Digital Millennium Copyright Act (DMCA).

Many people assume that online content, or content found on Web sites, is not subject to copyright law and may be freely used and modified without permission. This is not true. Others think that online content is not protected unless it carries a copyright notice. This is not true either. Copyright law protects almost all content on the Web or in any other digital or electronic form. Therefore, permission is most likely required to use that work beyond fair use.

What Is Protected?

Any copyright-protected content in a non-digital form will be protected in a digital form. Examples of copyright-protected materials include:

- **Print and electronic books**
- **Analog and digital musical recordings**
- **Print and e-mail letters**

- **Web sites**
- **Embedded works in Web sites**

Both electronic and non-electronic databases (such as professional directories and collections of images) may be copyright-protected if they reflect some level of creativity by the author in the selection or organization of the data. With the proliferation of new databases in electronic form, Congress is discussing new legislation to protect even those databases that do not meet the requirements in the Copyright Act.

Unique Uses

The electronic environment features methods of reusing copyright-protected materials. These methods include:

Scanning- scanning or digitizing a work (such as an article, book excerpt or photograph) produces a reproduction of that work. Prior to scanning a work, you must obtain permission from the copyright holder or their agent.

Using Content from a Web Site- before using any content on a Web site, you should determine its copyright status and, if necessary, obtain permission from the copyright holder or their agent.

Posting Content to a Web Site- posting copyright-protected content on a Web site requires permission from the copyright holder or their agent.

Forwarding E-Mail- the copyright in an e-mail belongs to the author of the e-mail. The copyright in an e-mail attachment belongs to the author of the attachment. You must obtain permission from the applicable copyright holder(s) or their agent(s) prior to forwarding an e-mail or e-mail attachment.

Linking to a Web Site- a link on a Web site lets you click and connect to another area of the same site or to a different site. A link from your site to another Web site (especially to a page other than the homepage) may need the consent of that Web site's owner. U. S. law is not clear on this issue. In an effort to be safe, many organizations only link their own sites to the public home pages (rather than the internal

pages) of other Web sites. To ensure compliance, obtain permission even to link to another Web site's home page.

Electronic Discussion Lists, Bulletin Boards and Newsgroups- copyright law protects all types of electronic discussions, including messages that appear in your e-mail inbox or ones that you access from a Web site or computer network. You should not reproduce or forward any comments from any electronic discussion list, bulletin board or newsgroup without the permission of the copyright holder or their agent.

VIDEO AND BROADCAST RECORDINGS

Guidelines for off-air recordings of broadcast programming for educational purposes. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

- 1. The guidelines were developed to apply only to off-air recordings by non-profit educational institutions.**
- 2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately.**
- 3. Off-air recordings may be used once by individual instructors in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar retention period.**
- 4. Off-air recordings may be made only at the request of, and used by, individual teachers and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher,**

regardless of the number of times the program may be broadcast.

- 5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.**
- 6. After the first ten (10) consecutive school days, off air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum and may not be used in the recording institution for student exhibition or any other non-evaluation purposes without authorization.**
- 7. Off-air recordings need not be used in their entirety but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.**
- 8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.**
- 9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.**

DEFINITIONS:

Broadcast programs- Television programs transmitted by television stations over the air or by cable or other means for reception by the general public.

School days- School session days- not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions- within the forty-five (45) calendar day retention period.

AUDIO AND VIDEO RECORDING ON CAMPUS

Public lectures and less formal or pedagogical presentations:

Public lectures or talks are to be distinguished from lectures of or closely associated with courses, workshops or other organized instructional activities. Typically, public lectures will

be those where the speaker presents in their professional role as a scholar or expert, rather than as an instructor. Public lectures also should be distinguished from settings in which it is customary to present work-in-progress: the kind of thing that might be marked, “please do not quote.” Thus, just because a lecture is advertised within a department does not make it public.

Lectures and presentations by guests:

Units of TCC that sponsor lectures by invited outside speakers often record the lectures. Unless written permission has been obtained from the speaker, however, the sponsoring unit, and TCC, will not have the right to distribute or disseminate these recordings. Without this right, these recordings have limited usefulness.

Therefore, permission to record and to make use of the recordings should be obtained using a permission form prepared by Video Support Services.

Lectures and presentations by TCC faculty and academic staff:

The circulation or publication of the text of public lectures by TCC faculty or academic staff has long been considered normal and unproblematic; at the same time any reservation or refusal expressed by the presenter has always been respected. Consistent with this practice, public lectures by TCC faculty and academic staff may be recorded and used by the District, subject to District policy. The District may use for non-commercial purposes recordings of public lectures or presentations delivered by its employees within the scope of employment, even if copyright ownership is ceded to the author(s). Concomitantly, ONLY the District, acting through the appropriate District officials, has the right to make and use recordings of the faculty or staff public lecture on campus unless special arrangements are made with the District. In keeping with past practice, any reservation or refusal expressed by the faculty or staff member should be respected.

Classroom activity and non-public lectures:

Recording classroom activities or informal talks may be useful for some purposes. Units should be thoughtful about setting their own policies within the broad framework of District guidelines and expectations, to ensure that the act of recording does not impede expression or class participation and that the recording is not misused.

Members of the faculty may record, or have recorded, their own classes for their personal use, digitization on District servers for student access or for the purpose of exchange with colleagues, e.g., for the purpose of developing or demonstrating pedagogical skills.

Instructors may permit a student to record a class session for the convenience of the student, for the benefit of another student who is unavoidably absent or as part of an accommodation for a student with a disability. Students must understand that under District policy, permission given by a member of the faculty to record a class is limited to permission to record for personal use only. It is, for example, never permissible to copy, file-share, sell, distribute or Web-serve such recordings. Members of the faculty who believe that their classes are being miss-appropriately recorded, or that recordings are being misused, should contact their Dean.

The District may from time to time wish to record, preserve or disseminate the exemplary work of distinguished colleagues in the classroom or lecture room. When the District undertakes to make such recordings, it will secure appropriate permissions.

District policies do not permit members of the faculty to “publish” recordings of their classroom or lecture room efforts, or to grant to others the right to distribute recordings, in any medium, of teaching or lecturing undertaken in fulfillment of teaching assignments, without prior approval of the District. The District has a sufficient interest in the intellectual property and in the District’s reputation to setting this limitation on what a member of the faculty may do. Moreover, there is a potential conflict of commitment: an instructor may feel some pressure to modify what or how they teach to make it more marketable.

Recordings by student groups:

Recordings by student groups of District events, academic or non-academic, may be made only with the consent of a cognizant official of the District. Student groups should seek consent to record from their campus Student Activities Office. After permission has been given, the students are then responsible for securing appropriate permissions from performers, speakers and participants. Such recordings and any derivatives made from them are the property of the District. Students may not copy, make derivatives from, distribute or disseminate such recordings in any medium without the permission of the District. The District asserts no copyright in creative work such as video or audio that is authored by students or student groups unless the recording is made under the duty of employment by the District.

Copyright of recordings:

Recordings made at the District should be marked, Copyright (date), Tarrant County College District and exhibit the District logo. While the copyright of the recording is in the name of the District, the author of the underlying recorded work retains all applicable rights to that work unless done while under the employment of and using the facilities of the District.

MUSIC

Use of recorded music is governed by ASCAP/BMI/SESAC contracts, allowing the use and broadcast of recorded music by faculty, staff and students, on campus and under the auspices of and benefit of Tarrant County College District.

Copying music- permissible uses:

- 1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.**
- 2. For academic purposes other than performance, single or 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 unit such as a**

section, movement or aria, but in no case more than ten (10) percent of the whole work. The number of copies shall not exceed one copy per student.

- 3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character or the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.**
- 4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual instructor.**
- 5. A single copy of a sound recording on any medium of copyrighted music may be made from sound recordings owned by an educational institution or an individual instructor for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual instructor. This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.**

Copying music- prohibitions:

- 1. Copying to create or replace or substitute for anthologies, compilations or collective works.**
- 2. Copying of or from works intended to be “consumable” in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.**
- 3. Copying for the purpose of performance, except as in permissible uses one (1) above.**
- 4. Copying for the purpose of substituting for the purchase of music, except as in permissible uses one (1) and two (2) above.**
- 5. Copying without inclusion of the copyright notice which appears on the printed copy.**

USING STUDENT MATERIAL

Whether to use student materials in your class or for public display will depend upon the relationship of the student at TCC. The typical TCC student who is not employed with the District is the copyright holder to any original works they create, such as papers, tests, e-mails and so forth. However, if the student is employed at TCC, any work created by the student within the scope of employment belongs to the District.

ITUNES, PODCASTS AND YOUTUBE

As long as instructors are purchasing music from iTunes, they should be in compliance with U.S. copyright law when downloading those songs. Songs available for purchase via iTunes have been specifically licensed for individual download and use. Note the iTunes use license is for INDIVIDUAL use and not group use. Individuals are permitted to play iTunes music (DRM protected as well as non-DRM music) on up to five computers in the same household. Those computers authorized to play a song are authorized within the iTunes application. It is possible for instructors to “share” their iTunes library over the local network, but that sharing just allows for streamed playback of songs, not actual copying of songs from the original hard drive to another.

It is important to understand the big differences between a commercial “store” application such as iTunes and peer-to-peer (P2P) file sharing applications which are often used for piracy of music, movies and software. iTunes is NOT a P2P application and does not present the malware risks associated with P2P software used for music downloading.

Instructors (and any other individual) may legally create CDs (rip their own CDs) with music they have purchased and downloaded from iTunes. The specific verbage in the iTunes Store terms of service which apply is: You shall be authorized to burn an audio playlist up to seven times. The use of “seven times” in this terms of agreement is interesting. This is not based in U.S. copyright law, in that copyright law does not specify a limit of seven times for creating duplicates. This restriction is imposed because duplication and dissemination of

purchased iTunes music should be limited by the terms of the service agreement.

There are multiple ways instructors can use copyrighted content from iTunes or other sources in ways that are not legal, and the subsequent copying or dissemination of those purchased music files to others for their use is an example of an illegal use. As an instructor, librarian, media services employee, etc. you cannot purchase a single copy of a song on iTunes and then provide unlimited copies (or legally, even one copy) of that song to someone else for them to keep and own. Purchasing a song from iTunes includes a license for individual use. Burned or “ripped” CDs which include copyrighted music (including music purchased via iTunes) are for the exclusive use of the purchaser, per these terms of the iTunes store.

Podcasts are licensed under different terms. The fact that a podcast is freely downloadable does not mean it can be used in any way. Some podcasts are licensed under Creative Commons terms, which are more permissive than traditional copyright (<http://creativecommons.org>). There are restrictions about how freely downloadable podcasts can be reused, remixed and/or re-posted online. In all cases except podcasts which are specifically licensed into and placed into the public domain, some sort of restriction (even if it is just a requirement for proper attribution) will apply to the reuse or re-posting of media content.

If it is on YouTube, just assume that it is OK to use and republish it. That is ABSOLUTELY NOT TRUE. Copyrighted materials are posted to YouTube frequently, and while some are taken down many remain. As a user-created media website, YouTube cannot and does not vouch for the copyright compliance of all the content posted there. Many hospitals, clinics, nursing schools, dental schools and medical schools post media on YouTube as a service to the health services community. These are generally free of copyright restrictions to avail health services workers with information regarding the latest in health care. However, if you are unsure about using these videos, please contact the TCC Copyright Compliance Office and a copyright check will be made for you. For more information on YouTube and copyright go to www.YouTube.com and click on the Help Center for copyright FAQs.

