Copyright Policy
Introduction

It is the policy of Mid Michigan Community College (MMCC) that all members and employees of the college community adhere to the provisions of the United States Constitution, Article 1, Section 8 - the Copyright Statute, including the Digital Millennium Copyright Act (DMCA) of 1998 in regard to all formats including print, digital materials, video, DVD, Blu-Ray, CD, record, cassette, electronic, slides, kits and any other form.

The purpose of this document is to:

- Present a basic explanation of the copyright laws with emphasis on its application to this college
- Discuss current copyright issues in higher education settings that reflect the concerns of this college and the publishing community with which MMCC regularly interacts and collaborates
- Encourage faculty, staff, guests and students to be aware of the rules and regulations regarding copyright infringement
- To help faculty, staff, guests and students understand procedure when using copyrighted materials

The current Copyright Law and its addendums as they appear in the U.S. Constitution are available at all MMCC locations.

Administrative Responsibility

The MMCC Library director shall be responsible for the implementation of this college's copyright policies, including policies related to the Digital Millennium Copyright Act (DMCA)

Individual Responsibility

Members of the college community who willfully disregard the copyright policy do so at their own risk and assume all liability and criminal penalties
Part I: Copyright Basics

What is a Copyright

A copyright is a form of legal protection for original works including literary, musical, artistic, dramatic and other intellectual creations. They give the exclusive right to do and/or authorize other to do the following:

- Reproduce copies of the work
- Prepare derivative works based on the copyrighted material
- Distribute copies of work by lending, lease, rental or sales
- Publicly perform the work
- Publicly display the work
- Sell copyrights to other individuals/parties

Copyrights can apply to a wide variety of different types of works including:

- Literary works including novels, articles, poems, texts and computer programs
- Musical works including lyrics and notations written by songwriters
- Dramatic works including plays
- Pantomimes and choreographic works
- Graphic, pictorial and sculptural works including drawings and photographs
- Motion pictures and other audiovisual works including home movies and television programs
- Sound recordings including anything created by any performing artist or record company
- Architectural works
- Digital media including websites, videos, graphics and podcasts – for more specific information see the section on The Digital Millennium Copyright Act

Some materials cannot be copyrighted, including:

- Facts and collections of facts, such as a phone book
- Ideas
Copyright is a different concept than ownership. For instance, ownership of a copy of a book does not include ownership of any of the copyrights. If you own a copy of a mystery novel, that concept of ownership does not allow you the privileges ascertained with the ownership of the copyright.

**Purpose of a Copyright**

A copyright law is not equivalent to trademark and patent laws. A trademark protects symbols and other designations of the origin of a service or product. A patent law protects inventions. All three are referred to in general terms as intellectual property law.

A copyright laws reward an individual’s creative talents through the provision of proprietary rights for the public and commercial exploitation of their works. This in turn provides economic incentive for them to continue creating new works that advance the public welfare in terms of knowledge and creativity.

While protecting the rights and concerns of such individuals, copyright laws recognize the public interest in ensuring and propagating the free flow of ideas and information. Thus copyright laws impose restriction on the scope of a copyright, including delegating fair use and public domain policies.

In regards to MMCC, copyrights are both beneficial and essential. They support a fundamental mission of this college by generating and propagating new knowledge and understanding through scholarship, research and teaching in two simple ways – by providing incentives for the creation of new works and by providing limitation on those rights in order to facilitate public access to and use of such creative works.

**Creation of a Copyright**

For an original work of creative expression copyright protection is immediate from the moment it is fixed in any tangible medium of expression from which it can be perceived, reproduced or otherwise communicated. For example, once an author writes an article or a novel on paper or on a computer, a copyright is attached. There is no other act or process necessary.
Copyrighted materials are often marked with a copyright symbol - ©. However, this symbol is not necessary, and many unregistered copyrighted works do not include it.

Though not necessary for protection, there are benefits to registering a work with the U.S. Copyright Office, including support against any alleged copyright infringement.

**Duration and Public Domain**

Works whose copyrights have expired or works that are intrinsically not copyrightable, such as phone books or government documents, are said to be in the public domain. This means that the work may be freely copied, performed, displayed, distributed or otherwise used in ways unrestricted by copyrights.

Copyrighted works may eventually be categorized as public domain materials as their copyrights expire. Determining what may or may not be in public domain is a complex process. Use the following as a general guideline:

- **Works originally published prior to January 1, 1978** are protected for 95 years from the date of publication or 120 years from the date of creation, whichever is longer; there are several exceptions, refer to the Copyright Act at the end of this document for more information
- **Works by named authors originally published after January 1, 1978** are protected for the duration of the author’s life and an additional 70 years
- **Works made for hire, corporate writings, anonymous works and pseudonymous works** are protected for 95 years from the date of publication or 120 years from the date of creation, whichever is longer
- **Works published prior to 1922 and before** are generally considered to be in the public domain and free for public use and reproduction

**Copyright ownership and transfers**

The initial copyright owner is the author or creator of the specific work. Generally the author of a work created by an individual is that individual.

A joint work is a work created by two or more authors or creators with the express intention that their contributions would be merged into a single work. In the instance of a joint work each author or creator owns an undivided interest in the completed work and may use it freely.

The author or creator of a work created by an employee acting within the scope of his or her employment is the employer, which may be a person or an entity, such as a college or institution. This is known as work made for hire and has two distinct complexities in terms of copyright ownership:

- The employee in the employer-employee relationship has no legal rights to immediate copyright ownership
• An independent contractor is not considered an employee. Work done by an independent contractor may be considered work made for hire only if the independent contractor agrees to such a stipulation.

Ownership of a copyright can be shared or transferred by the author or creator. For instance, when a book is published, the ownership of the copyright is often transferred to the publisher. Transfer of ownership of any and all parts of a copyright must be done in writing and signed by the transferor.

Only the current owner of a relevant copyright may bring an infringement action.

Copyright owners are free to forego any rights they may have over their works or they may shorten the term of their copyright, if they so choose.
Part II: Duplication and Copies

Use the following information as a guideline for copying or duplicating copyrighted materials in accordance with the US Copyright Act. These parameters may be seen as too restrictive for academic purposes, however somewhat more extensive copying may be allowed through the guidelines of fair use.

See Part VII: Fair Use Checklist for assistance in determining what qualifies as fair use.

Photocopying

Permitted

Single copies by or at the request of an individual instructor of:

- A single chapter from a single book
- An article from a magazine
- A short story, short essay or short poem
- A chart, graph, diagram, drawing, cartoon or picture from a book, magazine, newspaper or other periodical

Multiple copies by or at the request of an instructor for a single class; note that the number of copies must not exceed the number of students in said class:

- A complete poem up to but not exceeding 250 words if printed on no more than two pages
- An excerpt from a long poem up to but not exceeding 250 words
- A complete article, story or essay up to but not exceeding 2,500 words
- An excerpt from a larger printed work up to but not exceeding 10 percent of the whole work, or 1,000 words, whichever is less
- One chart, graph, diagram, cartoon or picture per book or magazine issue

Prohibited

- Copying more than one work or two excerpts from a single author during a single class term or semester
- Copying more than three works from a collective work or periodical volume during one class term or semester
- Copying more than nine sets of multiple copies for distribution to students in one class term or semester
- Copying for the purpose of replacing, substituting or creating anthologies, compilations or collective works
- Copying consumable works, including standardized tests, answer sheets and workbooks
- Charging students beyond the cost of copyrighting
- Making multiple copies without including a notice of copyright, if applicable
Audio/Visual

Permitted

- Creating an overhead transparency or slide from multiple sources so long as the creation does not exceed 10 percent of photographs, charts or diagrams of a single source
- Creating a single overhead transparency or slide from a single page of a consumable material such as a workbook
- Reproducing individual slides from a series if reproduction does not exceed 10 percent of the original and does not directly excerpt the creative essence or integrity of the original
- Excerpting sections of a film for a local videotape or DVD, which will not be shown publicly, if excerpt does not exceed 10 percent of the original and does not directly excerpt the creative essence or integrity of the original
- Literary excerpts may be narrated and duplicated so long as similar material, such as an audio book, is not available for purchase
- Archival copies of video, audio and other digital material may be reproduced so long as only one copy is used at any given time
- Copying a video to a differing format, such as a tape to a DVD, so that buildings with non-compatible formats to the original may have access to the material is allowable so long as only one tape is used at any given time

Prohibited

- Duplication of media material, except as permitted above, unless reproduction rights have been secured
- Reproducing commercial ditto masters, individually or in sets, if similar material is available for purchase
- Except as permitted above, converting one media format to another unless permission is secured from the copyright owner

Off Air Recording

Permitted

- Broadcast programs may be recorded off-air simultaneously with the original transmission and retained for 45 calendar days after date of initial recording; after the 45 day retention period, such recordings must be destroyed or otherwise erased immediately
- Off-air recordings may be used only once by individual instructors for relevant classroom activities and only once for necessary reinforcement during the first 10 consecutive school days after initial recording
- After said 10 days, recordings may be used up until the end of the 45 day retention period for instructor evaluation purposes only to determine if the program should be purchased for the curriculum
• No broadcast may be recorded more than once by the same instructor
• Off-air recordings do not need to be shown in their entirety, but may not be altered or edited in any way and must include the copyright notice of the original program

Prohibited

• Recording broadcasts in anticipation of using them academically; Instructor must have a clear intended purpose for recording a broadcast off-air
• Using the recording for instruction after the initial 10 day period
• Holding the recording indefinitely for the following purposes:
  o Lessons needing the program concepts are not taught within the 10 day period
  o An interruption or technical issue delayed it’s use
  o Another instructor wished to use it

If any of the above occurs, an instructor should check with the library to see if a legitimate copy may be obtained or purchased.

Multimedia and Internet

Permitted

• 10 percent or 3 minutes, whichever is less, of a copyrighted motion media work, such as a film or movie, may be copied or otherwise reproduced
• Copying or reproducing up to 10 percent or 1,000 words, whichever is less, of a digital text
• Up to 10 percent, but no more than 30 seconds of music and lyrics from an individual musical work
• Photographs or illustrations may be copied or otherwise reproduced in their entirety but no more than five images by an artist or photographer may be used
• When using photographs and illustrations from a published collective work, no more than 10 percent or 15 images, whichever is less, may be reproduced
• Up to 10 percent or 2,500 fields or cell entries from a copyrighted database may be reproduced or otherwise copied; a field entry is defined as a specific item of information, such as a name

The Digital Millennium Copyright Act of 1998 places the following restrictions on utilizing copyrighted multimedia material:

• Circumventing software anti-piracy measures is considered criminal
• Code-cracking devices used to illegally copy software are prohibited
• Cracking of copyright protection devices for testing computer security and for research purposes is allowed
• Copyright infringement liability for transmitting information over the internet is limited
• MMCC , it’s faculty, staff and library are required to remove material from users’ websites that appears to constitute copyright infringement
Webcasters must pay licensing fees to recording companies if utilizing recorded music

See the **Digital Millennium Copyright Act** available at all MMCC locations

**Software**

**Permitted**

- Backup copies or adaptations created as an essential step in the utilization of a copyrighted computer program
- A single back up copy for archival purposes to be held in the event the working copy is destroyed or otherwise no longer functions
- New copies of software covered by a licensing agreement with a software publisher so long as doing so complies with specified licensing agreement
- Copies of shareware software may be created for evaluation and demonstration purposes only; copies must be accompanied by a copyright notice and the publishers shareware license agreement

**Prohibited**

- Creating of any new copies of copyrighted software programs for any purpose other than those permitted above
- Creating new copies while utilizing a disk-sharing system
- Use of any code breaker programs utilized for the purpose of defeating copyright mechanisms put in place by software publishers
- Any modification of any kind to copyrighted software
- Distribution of older versions of software while upgrading to a newer version unless specifically permitted by the publisher – each version of software is considered lawfully protected by the original copyright
Part III: Exemptions to Copyrights

The following information details certain exemptions allocated for academic purposes. These exemptions allow greater freedom to the aforementioned limitations in terms of duplication of copyrighted material.

**Fair Use**

The concept of Fair Use, as described in detail in section 107 of the Copyright Act of 1976, accommodates the needs of scholars and students by mitigating the rights of copyright ownership. There are no set rules in determining what constitutes fair use of copyrighted materials, but rather a set of guidelines. To determine fair use when copying or duplicating copyrighted material consider the following four factors:

- **Purpose**
  
  *Is the material being copied for nonprofit or educational use?*
  
  Copyrighted material cannot be copied with the intent to make a profit

- **Nature of work**
  
  *Is the material being copied factual or imaginative?*
  
  Consider the format – a newspaper article is considered fair use, a textbook is not; a list of facts is fair use, an entire musical score is not

- **Amount of work to be copied**
  
  *Is a small or large portion of the material being copied?*
  
  It is prohibited to copy large portions of copyrighted texts – only 10% of the original material is allowed for reproduction

- **Effect on potential market**
  
  *Will the use of this material affect its market value?*
  
  It is unethical and prohibited to copy the core creative purpose of a copyrighted material, which would be detrimental to the market value; an example of this would be reproducing and distributing the solution of a murder mystery novel

See [Part VII: Fair Use Checklist](#) for assistance in determining what qualifies as fair use

**Face-to-Face**

The Copyright Act allows for the display or performance of copyrighted materials by instructors or students during face-to-face educational activities, including instruction and presentations, without the copyright owners permission. There are the following limitations:

- The display or performance of copyrighted material must occur in a classroom or similar environment used implicitly for instruction
- Any display or performance of an audiovisual work or motion picture must be from a lawfully obtained copy (i.e. a purchased DVD)
**Distance Ed and the TEACH Act**

The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 amended the copyright laws to encompass distance education and online classes. The TEACH Act revises Section 110 of the Copyright Act in order to permit the use of copyrighted works and materials in a real time, asynchronous distance education environment in a manner equivalent to face-to-face instruction, including the use of any work related to the curriculum, regardless of the medium. It allows the digitalization of works for use in digital distance education. The material referred to is typically performances and displays.

The exemption the TEACH Act affords applies to any copyrighted material that has not been expressly created, produced or marketed for use in online distance education classes. This exemption has the following limitations:

- Only limited portions of non-dramatic literary or musical works may be used. Examples of allowable works include poetry or short story readings or recorded music. The use of operas, music videos and musicals is not allowed.
- Displays should be limited to equivalent amounts of which is typically displayed in the course of a face-to-face classroom environment.
- Performances or displays of a work must be obtained from a copy that was lawfully created or otherwise obtained.
- Material must be directly related to the curriculum of the online-class and be of a similar nature to what is utilized in a face-to-face classroom environment.
- Transmitting copyright material through an online classroom environment must be limited to students officially enrolled in the specific class.
- The college must take reasonable measures to prevent students from retaining any shared copyright material beyond the class sessions.
- Any copyrighted material shared through distance education must not interfere with or defeat any retention or distribution rights afforded to the copyright owner.
- Material may only be made available for the duration of the distance education course.

See [Part VII: TEACH ACT Checklist](#) for help in utilizing the TEACH Act in an online environment.

See [Part VII: Fair Use Scenarios](#) for more information on Distance Education and Fair Use.

See [The Technology, Education and Copyright Harmonization Act](#) available at all MMCC locations.

**Libraries and Archives**

Due to the nature of these institutions, copyright laws provide certain unique exemptions for libraries and archives to reproduce and store copyrighted material. These exemptions are as follows:

**Copying for library patrons**

- The library may copy individual or single copies of material within the library for a patron so long as it falls under fair use. The library holds no liability if copied material is used for purposes other than private study, scholarship or research.
• The library may make copies of a substantial portion or an entire work for a patron provided the library has determined that an original copy of the work cannot be obtained at a fair price and the copied material will be used solely for private study, scholarship or research
• The library may only make one isolated copy or reproduction of single copyrighted and will not make multiple copies of the same material

Copying for the library’s collection

• The library may make up to three copies of an unpublished work for preservation purposes and three copies of published works to replace damaged, lost, stolen or deteriorated copies.
• Copies may be physical or digital. Digital copies must not be made available to the public outside the premises of the library or archives without the utilization of a subscription service

The library must satisfy the following conditions in order to qualify for the above exemptions:

• For the single copy authorization a library or archive must display the following warning of copyright near the copy machines:

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of reproductions of copyrighted material. The person using this equipment is liable for any infringement.

• Where applicable, the copyright notice should be included when copying protected material
• Musical works, pictorial, graphic or sculptural work, motion pictures and other audiovisual work may not be copied for library use except for preservation and replacement purposes

Interlibrary Loans

Interlibrary loan practices may not be used as a substitute to purchasing books, periodicals, videos and other material.

The library may copy or reproduce an article or a portion of a large work upon request provided that:

• The copied material will become property solely of the person requesting the material and the library is reasonably sure the material will not be used for any purpose other than private study, scholarship or research
• A copyright warning must be displayed prominently on the copied material as well as a copyright notice, if available
• The library may make copies of a substantial portion or an entire work obtained through interlibrary loan only if it has been determined that an original copy of the work cannot be obtained at a fair price
Reserve Material

The library will accept print copies of articles from instructors who would like them put on reserve. They will be held for one semester only. After one semester it must be determined if an archived copy of the periodical or book should be purchased for continued use.

Textbooks, books and other purchased material, including DVD's and CD's, may be kept on reserve for a limited time. Material kept on reserve for a prolonged amount of time may negatively affect the market value of the material.

Permission must be obtained in order to place a student's work on reserve.
Part IV: Obtaining Permission to Use Copyrighted Material

When it is desirable or necessary to use the entirety of a copyrighted work, permission must be obtained from the copyright owner. Permission is also required anytime use or duplication of a copyrighted work might hinder or infringe on the copyright owners rights, regardless of the amount of the material that is used or copied.

It is always appropriate to ask for permission to use any copyrighted materials.

To obtain permission contact the publisher of the material you wish to use or duplicate. Some publishers will send you a required permission form to fill out while others may ask for you to make your request in the form of a letter.

Include your name and contact information, information detailing the material you wish to use and what you will be doing with it (i.e. educational instruction).

The following detailed request form may be used in addition to a written request:
http://www.nacs.org/common/copyright/permissionrequest.pdf
Part V: Infringement and Legal Remedies

An infringement of a copyright occurs when copyright material is used in a way that exercises any exclusive right the copyright owner has. This includes reproduction or distribution of the protected material without express permission from the copyright owner or any duplication of the material that does not fall in the scope of proper copying procedure or one of the exemptions.

Infringement and violations of the copyright owner’s exclusive right generally requires that the amount of the protected work that is taken or copied to be considerable. However both the quantity and the quality of the work taken are considered. For instance, small portion copied from a work that embodies the creative essence of the work, such as the solution to a mystery novel, would be considered an infringement.

There are three distinct types of infringement and each are subject to different requirements:

- **Direct infringement** – this applies to the party that personally carries out an act which violates the copyright owner’s exclusive rights. Direct infringement is based on strict liability which means the person will be liable whether or not they knew the work was copyright protected and whether or not they intended to infringe
- **Contributory infringement** – this applies to a part that, with express knowledge of an act of infringement, materially contributed, induced or caused the act of infringement
- **Vicarious liability** – applies to any one who obtains financial benefit from an act of infringement

There are several legal remedies for a copyright owner to pursue in the event of infringement:

- The copyright owner may seek temporary and permanent injunctions against continued infringement in any instance of infringement
- The copyright owner may obtain restitution for actual damages from the defendant in the amount of financial losses suffered as a result of infringement, as well as any profits made by the defendant as a result of infringement
- If the copyright was registered before or within three months of the infringement the copyright owner may obtain reasonable costs and attorney’s fees at the discretion of the court
- If the copyright was register before or within three months of infringement the copyright owner may seek statutory damages within a specified range in an amount to be determined by the judge or jury. This range is between $750 and $30000 per infringed work
- In the case of nonprofit educational institutions and libraries, statutory damages may be eliminated if the infringing reproduction was undertaken with reasonable grounds for believing that the infringement was in fair use
- The Copyright act provides for criminal liability in cases of willful infringement for the purpose of private financial gain or commercial advantage, or in cases of willful electronic reproduction and/or distribution of works with a total retail value of more than $1000
**Limitations on Liability for Infringement**

The Digital Millennium Copyright Act affords certain limitations on the potential copyright liability of educational facilities that provide internet access and other digital network services to students, factual and any other third party:

Monetary remedies are precluded if certain conditions are met and the service provider (i.e. MMCC) would otherwise be seen as liable for copyright infringement as a result of the conduct of a user of their Internet access or digital network service. The conditions are as follows:

- The digital service serves as a conduit for educational communication, including browsing the internet and email usage
- The service automatically caches material on its own servers to facilitate its users' access to off-network materials
- The service hosts material that third parties cause to reside on the service provider's system or network, such as web page hosting
- The service provider presents directories, links or other information location tools that may lead to infringing material

See the **Digital Millennium Copyright Act** available at all MMCC locations
Part VI: Fair Use Checklist

Mid Michigan Community College
Checklist for Fair Use

Use the below checklist to determine if your intended purpose for duplicating copyrighted material falls under the Fair Use Guidelines as defined in section 107 of the Copyright Act of 1976

Purpose – How will the copyrighted material be used by you?

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching</td>
<td>Commercial Activity</td>
</tr>
<tr>
<td>Research</td>
<td>Profiting from the copied material</td>
</tr>
<tr>
<td>Scholarship</td>
<td>Entertainment</td>
</tr>
<tr>
<td>Nonprofit Educational Institution</td>
<td>Denying credit to original author</td>
</tr>
<tr>
<td>Criticism</td>
<td></td>
</tr>
<tr>
<td>Comment</td>
<td></td>
</tr>
<tr>
<td>News reporting</td>
<td></td>
</tr>
<tr>
<td>Transformative or productive use</td>
<td></td>
</tr>
<tr>
<td>Restricted access (to students or other appropriate group)</td>
<td></td>
</tr>
<tr>
<td>Parody</td>
<td></td>
</tr>
</tbody>
</table>

Nature – What is the nature of the copyrighted material?

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual or nonfiction based</td>
<td>Fiction</td>
</tr>
<tr>
<td>Important to educational objectives</td>
<td>Highly creative work (art, music, films, plays, etc.)</td>
</tr>
</tbody>
</table>

Amount – How much of the copyrighted material do you plan to copy?

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small quantity</td>
<td>Large portion or whole work used</td>
</tr>
<tr>
<td>Portion used is not central to entirety of work</td>
<td>Portion is central, or the ‘heart’ of work</td>
</tr>
<tr>
<td>Amount is appropriate for educational purposes</td>
<td></td>
</tr>
</tbody>
</table>

Effect – as a result of your copies, will the copyright holder be deprived of sales revenue?

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>User owns lawfully acquired or purchased copy of original work</td>
<td>Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>One or few copies made</td>
<td>Significantly impairs market or potential marked for copyrighted work</td>
</tr>
<tr>
<td>No significant effect on market for original work</td>
<td>Reasonably available licensing for use of copyrighted work</td>
</tr>
<tr>
<td>No similar product marketed by copyright holder</td>
<td>Making copy publically available</td>
</tr>
<tr>
<td>Lack of licensing for use of original work</td>
<td>Intend copy for repeated or long-term use</td>
</tr>
</tbody>
</table>
Part VII: Fair Use Scenarios
Fair Use is not a clean cut process. Each and every situation will have its own set of factors. The following scenarios are offered as examples on how to apply the four factors of fair use in common online academic situations:

Scenario: Journal Articles
An instructor would like to post a single fact-based journal article which is relevant to an individual online course curriculum. The instructor used the same article last year for the same course.

Purpose: The purpose of the use of the journal article is educational, which favors fair use.

Nature: The nature of the work is factual, which favors fair use.

Amount: A single article from a journal can be considered the entirety of an individual work, which is against fair use. However, if the use of the entire work is necessary for the educational intent, this amount can be seen as appropriate.

Market Effect: Using the article in one semester may have a minimal effect on the potential sale of the item, but repeated use can potentially compound that harm. Thus, ongoing use of the article can go against fair use, depending on the frequency of use. On the other hand, if the particular article is not listened for sale, the market harm would be minimal.

Alternatives: The instructor should inquire if MMCC subscribes to the article through an online database prior to posting it in the online classroom.

Scenario: Newspaper Articles
An instructor would like to post multiple newspaper articles spanning a significant amount of time from a local paper. The articles are relevant to an individual online course curriculum. The instructor subscribes to the newspaper.

Purpose: The purpose of the use of these newspaper articles is educational, which favors fair use.

Nature: The nature of the work is factual, which favors fair use.

Amount: Posting a single news article and not the entire newspaper favors fair use.

Market Effect: Limiting access to the individual news articles to only students enrolled in the specific course favors fair use. However, the continued repetitive use of the articles goes against fair use.

Alternatives: The instructor should inquire if MMCC has a subscription to the newspaper directly or through an online database prior to posting articles.

Scenario: Chapters from Novels
An instructor would like to post copies of several single chapters from multiple novels for an online literature course. Each chapter is uniquely relevant to the course curriculum. The library owns a copy of each individual novel. Because the chapters are from separate works, the instructor must evaluate fair use on an individual basis, though often the results will be similar

**Purpose:** The purpose of the use of the book chapters is educational, which favors fair use

**Nature:** The guidelines of fair use apply in a narrow scope to highly creative works, such as novels; the creative nature of novels often goes against fair use

**Amount:** Posting brief excerpts of an entire novel favors fair use. Isolated, individual and short chapters favor fair use as long as they are brief and do not take from the creative essence of the novel. However, because of the highly creative nature of novels, and the fact that often chapters are considerably long, the professor should consider choosing shorter excerpts from within the individual chapters to favor fair use

**Market Effect:** Limiting access of the chapters to students enrolled in the individual classroom favors fair use

**Alternatives:** The instructor may want to consider urging students to seek out electronic or physical copies from the library or seek permission from the copyright owner of the materials. Another possibility, if the chapters are essential to the course curriculum, would be to require the students to purchase individual copies

**Scenario: Workbooks**

An instructor would like to post a copy of an unused, commercially printed workbook. The instructor owns a physical copy of the book and it is relevant to an individual online course curriculum.

**Purpose:** The purpose of the use of the workbook is educational, which favors fair use

**Nature:** Workbooks are considered a consumable material which weighs heavily against fair use. Consumable materials are created and marketed specifically for individual student use, and are meant to be used and replaced regularly, not routinely copied for mass use

**Amount:** Providing significant excerpts or the entire workbook would go against fair use

**Market Effect:** Workbooks and other consumable material are created for the educational market and students are the main demographic of such materials. Providing students with free copies of these materials has a strong potential to deeply affect the market and therefore goes against fair use

**Alternatives:** Permission from the copyright owner should be sought prior to posting workbooks and other consumable materials. Another possibility would be to require students to purchase a copy of the workbook.
Scenario: Poetry

An instructor would like to post portions of a book of poems that has been out of print for several years. The poetry is relevant to an individual online course curriculum. The instructor feels this book is the best tool for teaching the course and will only use portions which are directly relevant to the curriculum.

**Purpose:** The purpose of the use of the book of poetry is educational, which favors fair use.

**Nature:** The guidelines of fair use apply in a narrow scope to highly creative works, such as poetry; the creative nature of the poems may go against fair use.

**Amount:** Limiting the amount of material to be posted to brief excerpts of the entire book favors fair use. However, each poem can be seen as an entire individual work in itself. Depending on the length of the poem or excerpt, using it may or may not go against fair use.

**Market Effect:** The book is out of print, and therefore there is no current market to be effected by using the material. However, the copyright owner may wish to re-publish the material in a commercial manner, so the potential market value may be damaged by use. On the other hand, limiting the use of the poetry to the individual students in the course favors fair use.

**Alternatives:** When using out-of-print materials, instructors should keep in mind that the material may be obtained through other sources available for purchase. The one book in this scenario may not be the only source for the sought after poetry.

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Scenario: Video

An instructor would like to post a video recording of a recent television broadcast which is relevant to an individual online course curriculum. The show is part of an ongoing series aired on network television and broadcast to the general public at no charge.

**Purpose:** The purpose of the use of the broadcast is educational, which favors fair use.

**Nature:** The guidelines of fair use apply in a narrow scope to highly creative works, including television programs. If the program is highly creative, such as a drama or sitcom, use of it would go against fair use. However, if it is a program, such as a news or current affairs broadcast, it would favor fair use.

**Amount:** Instructors should limit the portion of the video recording to the specific amount needed to satisfy their educational intent.

**Market Effect:** Limiting access to the students enrolled in the course would favor fair use. However, if the program is available for purchase, using it without purchasing it would go against fair use. Using network television programs which broadcast to the public free of
charge favor fair use more than the use of a network broadcast only to paying subscribers

**Alternatives:** One option would be for the instructor to provide a single off-air copy in the library reserves for student check out, so long as it is limited to a 10 day period. If the material is available for purchase, the instructor could inquire about obtaining a purchased copy for indefinite library reserve use.
Part VI: TEACH Act Checklist

Use the below checklist to determine if your intended purpose for using copyrighted material in an online distance education class falls under the TEACH Act as defined in Section 110 of the Copyright Act of 1976

___ Materials to be used are specifically intend for use by students enrolled in the specific course

___ Only the enrolled students will have access to the material

___ The material will be provided by the instructor during relevant lessons or chapters only

___ The materials are directly related to the curriculum and are necessary for the educational intent

___ A notice that the materials are copyright protected is included in the presentation of the materials

___ The student’s ability to retain or further distribute the material will be limited

___ The material will only be available for the duration of intended lesson or chapter

___ The materials will be stored on a secure server

___ Copies will be limited to the number necessary to transmit material successfully to the online classroom

___ The materials are of the proper formant and amount as indicated by the TEACH Act and fair use guidelines:

    ___ Limited performances of non-dramatic literary and musical works

    ___ Reasonable and limited portions of a dramatic literary, musical or audiovisual work

    ___ Displays are similar to the typical displays utilized in face-to-face interaction

___ Materials are allowable by the TEACH Act. The following materials are not to be used in distance education courses:

- Materials specifically marketed for use in digital distance education scenarios
- Illegally obtained copies of materials
- Textbooks, electronic reserves and other materials typically purchased by individual students for independent review and use outside the classroom or class session
Part IX: Frequently Asked Questions

Can an entire book or magazine be photocopied when there appears to be no other way to buy another copy?

Yes. However it must be determined beyond question that another copy cannot be bought at a reasonable price, within a reasonable period. A reasonable investigation will always require recourse to commonly known trade sources in the United States and, if that fails, an attempt to obtain the copyright owner’s permission.

Are there any concise, authoritative resources that can help determine when a particular publication might be free of copyright protection?

The United States Copyright Office issues a series of Copyright Circulars on many aspects of copyright. Individual Circulars are frequently revised and available on the internet at the following website:

http://www.copyright.gov/circs/

What if I discover the need to copy more than would be permitted as ‘fair use’ when there is insufficient time to obtain permission?

Copying more than would be considered fair use is unethical and prohibited. Contact the library to see if there is any other avenue to obtain the material.

May I purchase or rent a film from the local video store to use for class instruction?

While videos and DVD’s from a video store are often labeled “Home Use Only,” use of such tapes is considered fair use in a face-to-face teaching environment. Purchased films can also be placed on reserve if their intended purpose is purely instructional.

Is copying a rental video in order to use it again at a later date allowable?

No. That would be a blatant infringement on the rights licensed to the rental agency.

Can a film labeled “Home Use Only” be showed in an auditorium or other large space?

Yes. However the performance cannot be open to the public and must be for an educational purpose. Viewing a film in such a venue for entertainment is prohibited without proper permission from the copyright owner.

Can a college-owned video be copied for Reserve Use?

Not without express permission from the copyright owner.
Can a club or other student group show a film obtained from a video store?

No. However many film libraries and distributors do offer the required public performance rights for a slightly higher rental fee.

If I don’t have time to view a video that is due back to its vendor before I am able to, can a copy be made for me?

No. Copying preview videos is not permissible. An extension should be requested from the vendor.

Can a copy be made of a deteriorating or destroyed cassette or DVD that is currently out of print?

Permission of the copyright holder still must be obtained to copy the film in its entirety.

Is it permissible to use a single-user licensed software disk on multiple computers for use at the same time?

No. Multiple copies of a single-user licensed software disk should be purchased for use on multiple computers.

Can software be borrowed and uploaded into the hard disk memory of a personal computer of a MMCC employee, administrator or student?

No. This would contradict the concept of fair use unless the software was deleted from the hard drive upon return of the original, borrowed software.

Does fair use apply to materials on the Internet?

Yes, use the same guidelines for fair use in print for materials found on the internet.

If the material I want to copy doesn’t have a copyright notice, does that mean it is not protected?

No. Many materials do not include a copyright notice and are still protected. It is best to assume that all material is copyright protected.

Can copyrighted images be used in multimedia projects?

Yes, so long as they fall under the fair use guidelines and the project will not be published (i.e. on a public website).
Part X: Definitions

**Anthology/Compilation/Collective Work** a work comprised of a number of contributors, which may be separate and independent works themselves, assembled into a whole. In the educational context, the anthology need not be bound together or distributed all at once, but may be distributed through the semester.

**Archival Copy** An original or a copy of an original work kept in a restricted area, to be used as determined by the contract or license with the copyright owner; usually refers to computer software and audio/video recordings.

**Classroom** A place in which instruction takes place, including a library, classroom, gymnasium or any room dedicated to instruction.

**Copyright** The federal right which is designed to promote the progress of science and arts by securing for the author or creator the benefits of his or her original work for a set amount of time; this statute balances the author's or creator's interest against the public interest in dissemination and reproduction of information and creativity.

**Distance Ed** A program that facilitates education through an online, asynchronous classroom environment that provides the equivalent instruction and interaction of traditional face-to-face instruction.

**DMCA** The Digital Millennium Copyright Act, signed into law on October 28, 1998 in an attempt to address copyright related issues that were not clearly covered in the United States Copyright Act of 1976, including the presentation of materials using digitally stored and produced materials and presentations on the Internet.

**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.

**Face-to-Face Teaching** Instructional activity in a classroom environment that is part of a systematic instruction and comprised of registered students and/or faculty and professional staff.

**Fair Use** The right to reasonably use copyrighted materials without the direct consent of the copyright owner for educational purposes.

**Infringement** Any duplication or reproduction of copyrighted material that negatively influences the authors or creators rights, including affects on the potential market value of the original copyrighted work.
Interlibrary Loan The practice of searching for and borrowing material from other library locations

Multimedia A production involving a combination of text, pictures, sound, graphics, film clips and other creative mediums

Off-air recording Taping a program broadcast over channels normally received free of charge, such as those found on network television

Public Domain Works which are not protected by copyright

Public Performance a performance open to the public or a group outside the normal circle or family of social acquaintances; An example would be a film advertised to the general public on campus, which would require licensing

Reserve Materials Any material, generally held in a secure location of a library that is kept for a restricted group and not meant for public circulation

TEACH Act A recent addition to the copyright law, the Technology, Education and Copyright Harmonization Act is an exemption that allows for greater use of copyrighted material in the context of academic education