



Instructional Materials Copyright Policy

February 1, 2023

General Statement

All instructional materials used by the faculty of the University of Northwestern Ohio, including but not limited to textbooks, professional journals, articles, pictures, audio and video productions, publisher provided teaching materials, and all faculty created works, fall under the protection of copyright law regardless of whether or not the materials contain specific copyright statements. As such, faculty must use due diligence in applying copyright law to determine the legal suitability of the instructional materials they may use in the classroom and electronically through the Internet. While faculty may seek advice from the Information Technology department, faculty are ultimately responsible for ensuring that all instructional materials are in compliance with current copyright laws and regulations.

This policy is intended to create a framework of understanding with suggested best practices so that copyright law can be applied in practice when judging the legalities of using copies of instructional material. This framework and the best practices are structured around copyright law as it is applied to printed materials and around the TEACH Act (Technology, Education and Copyright Harmonization Act) and the DMCA (Digital Millennium Copyright Act), both of which further define copyright law as it applies to the making and storing of digital copies of instructional materials that may in turn be transmitted electronically over the Internet. The guidelines contained within this policy do not constitute legal advice and therefore should be used as general guidance. When in doubt, consult a practicing copyright attorney for legal advice.

The University will take appropriate disciplinary action against any faculty member who violates this policy. Conduct in violation of the principles set forth in this policy, with respect to the use of all instructional materials made available through the University in the delivery of courses to students, may also be subject to criminal or legal action.

Applicability

This policy applies to all instructional materials used in the classroom, materials made available electronically through the LMS to face-to-face students (web enhanced courses), and materials used in distance learning (learning or content management systems) by faculty who deliver courses to students. Please consult the deans or instructional designers if in doubt about allowed usage of copyrighted materials.

Guidelines

Because copyright law is complex and many times seemingly vague or overly restrictive, UNOH is providing the following guidelines and suggested best practices for applying copyright law. These are broken into three categories: 1) Instructional materials used in face-to-face course delivery; 2) Instructional materials used in distance learning or web enhanced course delivery; and 3) the Rules of Fair Use. Faculty should make best efforts in applying categories 1 and/or 2 in all cases. However, if permission cannot be obtained from the copyright holder, it is possible that the Rules of Fair Use may be applied.

1) INSTRUCTIONAL MATERIALS USED IN FACE-TO-FACE COURSE DELIVERY	
<p>These guidelines only apply to printed copies distributed to students or digital materials presented to students within a classroom. Therefore, these guidelines do not apply to digital copies posted online in the Virtual College or any other electronic distribution system. Please refer to the “Instructional materials used in distance learning or web enhanced course delivery” section for guidelines on their use.</p>	
<p>PRINTED COPIES</p> <ul style="list-style-type: none"> • PowerPoints • Articles • Other 	<ul style="list-style-type: none"> • Printed copies of PowerPoint slides, articles, and other handouts should include proper citations in addition to any copyright notices required by the author or publisher.
<p>ANCILLARY MATERIALS</p>	<ul style="list-style-type: none"> • Whenever possible, seek out written permission to use any ancillary materials. This may include permission granted through e-mail messages or phone conversations (must be documented). <ul style="list-style-type: none"> ○ When requesting permission, be specific about the materials being used. Many owners may allow for portions of a work to be used but not the entire work.
<p>PUBLISHER MATERIALS</p> <ul style="list-style-type: none"> • DVD Video Segments • Supplementals • Other 	<ul style="list-style-type: none"> • Check with the textbook publisher for copyright notices regarding the allowed usage of copied materials for use in the classroom. <ul style="list-style-type: none"> ○ Publishers may grant permission to play an accompanying DVD of video segments for performance in the classroom, but may not allow that same DVD to be uploaded to a LMS so that students may play it at a later time over the Internet. ○ Never assume that what can be done in the classroom can also be done electronically online.

<p>FULL LENGTH MOVIES</p> <ul style="list-style-type: none"> • DVD Movies 	<ul style="list-style-type: none"> • Full length movies and television programming may be played in their entirety to students registered for a course in a classroom. However, the materials must not have been acquired through a process that has circumvented any copy protection schemes of the original digital media (pirated copies of DVD movies as an example).
<p>VHS CONVERSION TO DVD</p>	<ul style="list-style-type: none"> • A VHS format recording (or other analog records) may be copied to a digital format (a DVD copy for example) only if there is no digital copy available for purchase or if permission to copy cannot be obtained from the copyright owner. <ul style="list-style-type: none"> ○ Any copies made from analog recordings into a digital format may only be used within the classroom and may not be distributed outside of the institution.
<p>BORROWED MATERIALS</p> <ul style="list-style-type: none"> • Institutional Materials • Faculty Materials 	<ul style="list-style-type: none"> • When using materials supplied to you by the institution or borrowed from other faculty members, do not remove existing citations or credits. Give credit where credit is due in order to avoid any charges of plagiarism as well as complying with copyright law.

2) INSTRUCTIONAL MATERIALS USED IN DISTANCE LEARNING OR WEB ENHANCED COURSE DELIVERY

These guidelines only apply to digital course materials that will be posted to the Virtual College or other electronic media distribution systems. This includes any course materials used in the classroom that are subsequently posted to the Virtual College for the convenience of students.

<p>SEEK & DOCUMENT PERMISSION</p>	<ul style="list-style-type: none"> • Whenever possible, seek out written permission to use any digital materials, direct or copied. This may include permission granted through e-mail messages or phone conversations (must be documented). <ul style="list-style-type: none"> ○ When requesting permission, be specific about the materials being used. As with printed materials, many owners may allow for portions of a work to be used but not the entire work. In the case of DVD movies, request permission to use a specific 10-minute segment rather than the whole DVD. If granted, the segment can be copied and
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posted into the Virtual College course with a proper citation and copyright notice.

**DO NOT CIRCUMVENT
COPYRIGHT PROTECTION**

- Under no circumstances, even within the terms of fair use, should software copyright protection schemes be circumvented. Under copyright law (specifically DMCA), no one is allowed to circumvent such protections (regardless of ease of doing so) then subsequently use the material for classes.

CONSULT LIBRARY

- Check with the library (electronic reserves, subscriptions, or databases) for suitable alternative content.

**LOCATE & UTILIZE CREATIVE
COMMON LICENSE MATERIALS**

- Search for content that is governed under the Creative Commons License. There are many materials that are available and can freely be copied under this licensing scheme. The authors have agreed to make the content freely available for use in an educational setting (not for profit) through a simple citation and/or copyright notice.

3) RULES OF FAIR USE

When permission cannot be obtained for the use of printed or electronic materials, the rules of fair use may come into play. Copyright law provides that in limited circumstances the fair use of a copyrighted work for certain purposes, including teaching, scholarship and research, is not a copyright infringement. The law identifies four factors to be considered in determining whether use of a work is “fair use.” UNOH provides the following guidelines as appropriate applications of those four fair use factors. When in doubt, consult a practicing copyright attorney for legal advice.

“(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;”¹

UNOH is a not for profit institution of higher education and is therefore using all course materials for the education of our students. However, no course materials should ever be used in a public setting as this constitutes a public performance.

Work that is for nonprofit educational use favors fair use.

- **An instructor may play a commercial DVD movie in its entirety in a classroom setting to students enrolled in their course. This use serves an educational purpose. However, this same DVD movie cannot be played in front of a student gathering when students are invited to attend for entertainment purposes.**

“(2) the nature of the copyrighted work;”¹

The nature of the copyrighted work is an important determining factor in applying the rules of fair use. If a work is published and is factual in nature, the rules of fair use may be applied in determining whether or not the work may be used within the classroom. If a work is unpublished or is fictional or imaginative in nature, the rules of fair use do not favor the use of the work unless permission is obtained from the copyright owner.

Work that is factual favors fair use.

- **An instructor may copy and distribute to their students in a classroom an article that contains factual research results contained within a professional journal from a publisher that no longer exists.**
- **An instructor may not copy and distribute to students the entirety of an out of print fictional novel. However, portions of the novel may still be used should the other three rules of fair use apply.**

“(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;”¹

As a general guideline, UNOH suggests that “amount” should be limited to 10% or less of any one work and that “substantiality” should be limited to material that is necessary to illustrate an educational point.

Using a small portion of the work favors fair use.

- **For a 90 minute DVD movie, no more than a 9-minute segment may be copied and posted electronically. In regards to substantiality, only use a 5-minute segment if that is all that is needed illustrate a point.**
- **For a periodic professional journal with 12 published articles, no more than 1 article may be copied and posted electronically unless the pages of the article total more than 10% of all the pages of the journal. In regards to substantiality, use only the portion of the article, an illustration or table for example, rather than the whole article.**
- **For a 12 chapter textbook, no more than 1 chapter may be copied and posted electronically.**

“and (4) the effect of the use upon the potential market for or value of the copyrighted work.”¹

UNOH does not promote or condone the use of copied course materials that are given to students for use in the classroom or online that circumvents the purchase or royalty process.

The following factors favor fair use:

The author or publisher is not denied expected payments for the work

One or a few copies are made for student use

The work will only be used one time in the classroom

Will only be used by students in the classroom

- **An instructor teaches a course where students are required to purchase four novels. In this situation, an instructor is not allowed to make a copy, either on paper or electronically, of their personally owned novels and then distribute those copies to their students.**
- **An instructor requires the use of a textbook. However, the bookstore did not have sufficient supplies on hand. The instructor may produce a limited number of copies of the first chapter or two for only those students who were not yet able to purchase the textbook to give the bookstore time to receive their supply.**

*Application of the Rules of Fair Use

¹ Copyright Law of the United States | U.S. Copyright Office. (2022, October). Retrieved December 28, 2022, from <https://copyright.gov/title17/>.

The Fair Use Checklist may be used to determine if a copyrighted work may be used under the rules of fair use without having to obtain permission of the copyright owner.

Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading (this includes unauthorized peer-to-peer file sharing) substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or “statutory” damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For “willful” infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys’ fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. For more information, please see the website of the U.S. Copyright Office at <https://copyright.gov>.