



Copyright Policy

I. Applicability

This policy applies to National Career College's faculty, students, administrators and academic, technical and office staff and other persons or entities performing collaborative work or service for the College, whether compensated by the College or not. This policy extends to all works of authorship and creativity covered by federal copyright law. These works include print (e.g., books) and electronic documents, software (including source code and object code), databases, multimedia and audiovisual materials, photographs, music, works of drama, works of art (sculpture), among other types of creative works.

II. Policy

As the fundamental purposes of the College include the creation, compilation, and preservation of knowledge in permanent and transmissible forms and the circulation and diffusion of such knowledge to the College community and to the global community, the College holds in the highest regard the rights that govern the creation and diffusion of knowledge, and the laws that define and enforce them. This regard applies to both the rights of creators in and to their creations (copyright) and the rights of students, faculty, researchers, and scholars to avail themselves for legitimate purposes of others' creations (fair use).

The policy of National Career College is as follows:

Members of the National Career College community are expected to be mindful of the restrictions imposed on them by copyright law as well as the rights conferred on them by the fair use exemption to the copyright laws. Members of the National Career College community are expected to comply with the copyright laws.

Section IV of this document contains a definition of copyright and fair use. Also, to facilitate compliance, there are resources within the National Career College community which provide basic information about copyright restrictions and the fair use exemptions.

Further explanation and related information may also be found in National Career College's Policy on Rights and Responsibilities With Respect to Intellectual Property, which covers copyright ownership that members of the National Career College community have for their own creations. National Career College's Information Technology Responsible Use Policy is also a useful reference for copyright restrictions that apply to electronic media.

Enforcement

Reports of possible infringement should be made to the Program Director and Campus Director. Members of the National Career College community who violate this policy may be subject to disciplinary action, among other possible penalties. If the College is notified by a copyright owner, publisher, distributor, or law enforcement agency of possible infringement, the Program Director or designee, will direct an investigation, require the violator to correct any infringement, and may impose disciplinary action on the responsible parties.

III. Standards Applied

In a nutshell, "copyright" says that you are prohibited from using a work unless you own the copyright or have permission; "fair use" says that you may use the work with neither copyright ownership nor permission if your use is indeed fair under the legal criteria set forth below. Note however, that "copyright" and "fair use" have only been summarized below in Sections IV A and IV B, respectively. This is a complex area and members of the community should seek guidance when needed from this web site, or from National Career College library.

A. What is Copyright?

Under U.S. law, "copyright" is a bundle of exclusive rights, conferred by federal statute (the 1976 Copyright Act, found in Title 17 of the United States Code) automatically, upon the author of a work, at the instant of its creation. Creation occurs legally when a work is fixed in a tangible medium of expression for a period of more than transitory duration.

Subject to a number of statutory limitations, none of which--except "fair use"--will be reviewed here, the owner of the copyright in a work has the exclusive right to do and to authorize any and all of the following:

1. To reproduce the copyrighted work in copies;
2. To prepare derivative works (the movie of a book is a derivative work);
3. To distribute copies of the copyrighted work publicly;
4. To perform (e.g., an opera) the copyrighted work publicly;
5. To display (e.g., a sculpture) the copyrighted work publicly, and
6. In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

If a person or entity does not own the copyright in a work, does not have permission to do 1-6, and does it anyway, then the individual or entity is infringing. The "fair use" of copyrighted materials is an exemption to these prohibitions.

B. "Fair Use" Exemption

The "fair use" of a copyrighted work, including copying for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not

an infringement of copyright. In determining whether any given "use" is "fair," a court is required to consider the four non-exclusive factors listed in Section 107 of the 1976 Copyright Act:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit education purposes;
2. The nature of the copyrighted work (is it an artistic masterpiece or merely a laborious compilation of readily available but voluminous data);
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

A court is to balance all four factors "flexibly," is not to rely solely on any one factor, and may consider additional factors it deems appropriate. "Fair use" is intended to enable the court to be just and reasonable in the particular case before it. It is often difficult to predict the outcome of a dispute over "fair use."

Electronic Course Content

Making an electronic copy of a copyrighted work by any means (e.g., scanning, digitizing, ripping, etc.) constitutes reproduction that is governed by copyright law. Any use of copyrighted electronic course content that would require permission from the copyright owner if the materials were part of a printed course pack likewise requires the copyright owner's permission when made available in electronic format, unless one concludes, after reasonable inquiry, that the use qualifies as a fair use or other exempt or licensed use for which permission is not required. Copies of copyrighted works, regardless of their format, should include proper attribution and copyright notices. It is preferable to link to materials already legally available at another site, such as the content in databases or e-journals licensed by the National Career College library, rather than scanning or making a digital copy.

To the extent technologically feasible, instructors should use passwords, ID numbers, or other appropriate means to limit access to copyrighted electronic course content to students enrolled in the course or other individuals requiring access to the course materials for purposes of conducting the course. The availability of such content to students should terminate when the students have completed the course.

Infringement Litigation

Congress and copyright owners take infringement very seriously, and statutory penalties can be draconian. "Statutory" damages (as opposed to "actual" damages, which must be proved with evidence) may be elected by the plaintiff copyright owner and can be as much as \$30,000 per infringed work; in cases of willful infringement, the court may increase an award of statutory damages to any sum up to (and including)

\$150,000. Statutory damages are not imposed, however (under a specific statutory exclusion), in any case where an employee of a nonprofit educational institution or library acting within the scope of her/his employment "believed and had reasonable grounds for believing" that her/his use of the copyrighted work was fair use (even though it was in fact an infringement). The word "reasonable" in a statute is a trigger for factual inquiry and, in case of dispute, for judicial resolution of what was "reasonable" in the particular circumstances. Willful infringement of copyright for "commercial advantage or private financial gain" may be criminal, and conviction can result in fines and imprisonment. The creators and distributors of "content" in the electronic age may pursue very actively infringement actions against individuals and institutions.

IV. Changes to This Policy

The College reserves the right to change this policy from time to time. Proposed changes should be recommended to the Campus Director. The Campus Director must approve any changes to this policy.

Fair Use

The "fair use" of a copyrighted work, including copying for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright. In determining whether any given "use" is "fair," a court is required to consider the four non-exclusive factors listed in Section 107 of the 1976 Copyright Act:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit education purposes;
2. The nature of the copyrighted work (is it an artistic masterpiece or merely a laborious compilation of readily available but voluminous data);
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

A court is to balance all four factors "flexibly," is not to rely solely on any one factor, and may consider additional factors it deems appropriate. "Fair use" is intended to enable the court to be just and reasonable in the particular case before it. It is often difficult to predict the outcome of a dispute over "fair use."

What is fair use?

The doctrine of fair use, embedded in **Section 107 of the Copyright Act of 1976**, addresses the needs of scholars and students by mitigating the rights of copyright ownership. However, what constitutes fair use is expressed in the form of guidelines rather than explicit rules. To determine fair use, consider the following four factors [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

- **The purpose and character of the use**, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.
- The **nature** of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.
- The **amount, substantiality, or portion** used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.
- The effect of the use on the **potential market** of the copyrighted work. This factor is regarded as the most critical one in determining fair use, and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner that use is unlikely to be found a fair use.

What are fair use guidelines?

In an effort to interpret the standards for fair use set forth in the copyright law, groups of publishers, authors, educators, organizations and associations have developed guidelines for dealing with specific types of material. Although some of these guidelines are widely accepted and referred to, and some are not, none of them have the force of law. There may be instances in which copying does not fall within the stated guidelines yet may be permitted under the criteria of fair use. The following guidelines are included here for informational purposes only.

- Guidelines for Classroom Copying of Books and Periodicals
<http://www.copyright.gov/circs/circ21.pdf>
- Guidelines for Fair Use of Educational Multimedia
- Guidelines for Educational Uses of Music
- Guidelines for Off-Air Recordings of Broadcast Programming for Educational Purposes
- Guidelines on Photocopying under Interlibrary Loan Agreements, from the National Commission on New Technological Uses of Copyright Works (CONTU)
- Conference on Fair Use (CONFU)
<http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

Are the fair use “rules” the same for print & electronic version?

The fair use provision does not distinguish among media. It applies equally to all media. Nevertheless, publishers are considerably more concerned about abuse of fair use in the electronic environment because of the ease of electronic duplication and distribution.

All works on the web are protected by copyright just as print works would be, from the moment of their fixation in a tangible medium of expression. Thus, a user would need permission from the author to republish a work.

If an article is on the web and the library has a license, do I have to follow the fair use rules?

The library has negotiated database contracts that allow faculty to link to licensed journals on their course pages if the course pages are password protected and open only to authorized National Career College students, staff and faculty.

Are the fair use guidelines for newspaper articles the same as for journal articles?

Yes. See Guidelines for Classroom Copying of Books and Periodicals

How many drawings, illustrations, or graphs can be copied (digitally or in hard copy) for students in a class and still remain within the fair use criteria? Does it matter if I put them in a manual, pass them out in class, or just use them in a lecture?

This would be determined by looking at the fair use factors. No specific numbers can be given. Since this is a nonprofit educational use, the most important question is whether the drawings or illustrations are all from the same published work, or from different works. The fewer items you include from one work, the better. If the illustrations do not constitute a substantial portion of the work as a whole and do not affect the market for or value of the copyrighted work, this may be fair use. You may want to consult the Guidelines for Classroom Copying of Books and Periodicals which many consider to be “safe harbor” guidelines. These would allow passing out one copy to each student in a face-to-face classroom situation, on a one-time basis (not each semester). To determine fair use, one must consider all of the following four factors:

1. the purpose and character of the use;
2. the nature of the copyrighted work;
3. the amount, substantiality, or portion used; and
4. the effect of the use on the potential market

If you decide that copying the material falls within the criteria for fair use, your reprint should include any copyright notice contained in the original, as well as appropriate citations to the original source. If fair use does not apply, permission is needed. The fair use analysis would be the same for print or digital formats.

May an instructor make copies of slides checked out from the library?

The instructor should obtain permission from the copyright holder. The fair use of slides is somewhat narrower than the fair use of scholarly articles because several factors in the fair use analysis weigh against fair use when considering images. Slides are more creative and artistic than factual; they are entire works rather than parts of works. Thus, two of the first three factors weigh against fair use. The fourth factor will also weigh against fair use when the slides are readily available from a commercial source, as so many are.