

2.16 Copyright and Fair Use Policy

Last Revised: March 2021

Policy: Piedmont Community College is devoted to the creation, discovery, and dissemination of knowledge, and the College supports the responsible, good faith exercise of full fair-use rights by faculty, librarians, and staff in furthering their teaching, research, and service as codified in [17 U.S. C. §§ 101-108](#). Furthermore, it is the intent of Piedmont Community College to adhere to the provisions of United States copyright laws.

Purpose/Definitions:

Purpose

This policy provides guidelines for the use of copyrighted materials in College-sponsored instruction, activities, events, publications, and theatrical or musical performances, all of which must comply with federal copyright laws.

Employees are prohibited from copying materials not specifically allowed by copyright laws, fair use guidelines, licenses or contractual agreements, or other permission. Employees who willfully disregard copyright laws do so at their own risk and assume all liability for their actions.

Copyright laws mandate that the College develop and distribute to employees guidelines that clearly discourage violation of the copyright laws and that inform employees of their rights and responsibilities under this law. These guidelines represent a sincere effort by the College to comply with all applicable laws regarding copyright.

Definitions

Computer Program—in the context of United States copyright law, a “set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result” ([15 U. S. C. § 101](#)).

Copyright—the exclusive intellectual property right of the copyright owner to do and to authorize others to exercise any of its rights defined by the Copyright Act with regard to any original work in any tangible medium of expression. Such tangible medium of expression includes and is not limited to text, images, video and audio recordings, and electronic and digital files. Copyright arises automatically as soon as the work is fixed; publication or registration is not required. Copyright notice such as the symbol ©, or the word “copyright” or an abbreviation of it, is not required for copyright protection. Most material fixed in a tangible medium of expression will be subject to copyright protection.

A copyright owner possesses a bundle of rights, including the rights to:

1. reproduce the work;
2. prepare derivative works;
3. distribute copies of the work by sale, transfer of ownership, lease, licensure, and so forth;
4. publicly perform the work;
5. publicly display the work, directly or by telecommunication;
6. publicly perform a sound recording by digital means.

If a party other than the copyright owner exercises any of these rights without express permission from the copyright owner, that party is in danger of copyright infringement.

Fair Use—allows for the use of copyrighted works without the owner’s permission, protecting limited use of a copyrighted work from being an infringement. Copyright laws provide that the “fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” Courts decide fair use by weighing the following four factors:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
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 or the value of the copyrighted work.

Not all educational uses meet the guidelines for fair use. It is important to consider these factors of fair use and to follow the guidelines presented in this policy, and not to assume that because the underlying purpose is non-profit educational use that such use will automatically be fair use. See **Exhibit 2.16: Strategies for Determining Fair Use** for more information.

Public Performance—music played for third parties by almost any means including CDs, cassettes, records, videos, live music, telephone music-on-hold, jukeboxes, and radio or television music played over a commercial system. A public performance is one that occurs “in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.” A public performance also occurs when the performance is transmitted by means of any device or process (for example, via broadcast, telephone wire, or other means) to the public.

Special Works—certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety.

Approval Authority/Monitoring Authority: Piedmont Community College’s Board of Trustees has approval authority for this policy. The President has monitoring authority for this policy.

Procedure:

Section 1: Guidelines for Photocopying Print Materials for Educational Purposes

1.1. Copyrighted print materials may not be photocopied without the prior permission of the copyright owner unless the circumstances satisfy the requirements for fair use.

1.1.1. The guidelines set forth below are to be used to determine whether the prior permission of the copyright owner shall be sought.

1.1.2. If the proposed photocopying is not permitted under the guidelines, the permission of the copyright owner shall be sought.

1.1.2.1. After permission has been sought, copying may be undertaken only if permission has been granted and in accordance with the terms of the permission.

1.2. Single Copying for Instructors

1.2.1. A single copy may be made of any of the following by or for an instructor at his or her individual request for his or her scholarly research or for use in teaching or preparation to teach a class:

1.2.1.1. a chapter from a book;

1.2.1.2. an article from a periodical or newspaper;

1.2.1.3. a short story, short essay, or short poem, whether or not from a collective work; or

1.2.1.4. a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

1.3. Multiple Copies for Classroom Use

1.3.1. Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made for classroom use or discussion by or for the teacher of the course provided that the copying:

- 1.3.1.1. meets the tests of brevity and spontaneity as defined below,
- 1.3.1.2. meets the cumulative effect test as defined below, and
- 1.3.1.3. includes a notice of copyright on each copy.

1.4. Test definitions

1.4.1. Brevity

1.4.1.1. Poetry

- 1.4.1.1.1. A complete poem if less than 250 words and if printed on not more than two pages or,
- 1.4.1.1.2. A complete poem if from a longer poem, an excerpt of not more than 250 words
- 1.4.1.1.3. Each of the numerical limits stated in (1) and (2) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

1.4.1.2. Prose

- 1.4.1.2.1. Either a complete article, story, or essay of less than 2, 500 words, or
- 1.4.1.2.2. 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.
- 1.4.1.2.3. Each of the numerical limits stated in (1) and (2) above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

1.4.1.3. Illustration

- 1.4.1.3.1. One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue

1.4.1.4. "Special" Works

- 1.4.1.4.1. "Special" works may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of

such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

1.4.2. Spontaneity

1.4.2.1. The copying is at the instance and inspiration of the individual teacher, and

1.4.2.2. 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.

1.4.3. Cumulative Effect

1.4.3.1. The copying of the material is for only one course in the school in which the copies are made.

1.4.3.2. 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.

1.4.3.3. There shall not be more than nine instances of such multiple copying for one course during one class term.

1.4.3.4. The limitations stated in 1.4.3.2 and 1.4.3.3 shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

1.5. Notwithstanding any of the above information in Section 1, the following shall be prohibited:

1.5.1. 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 are accumulated or are reproduced and used separately.

1.5.2. 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 materials.

1.6. Copying shall not:

- 1.6.1. Substitute for the purchase of books, publisher's reprints, or periodicals;
- 1.6.2. Be directed by higher authority;
- 1.6.3. Be repeated with respect to the same item by the same teacher from term to term;
- 1.6.4. No charge shall be made to the students beyond the actual cost of the photocopying.

Section 2: Guidelines for Copying Audio-Visual Materials

- 2.1. Copyrighted audio-visual materials may not be recorded or otherwise copied without the prior permission of the copyright owner unless circumstances satisfy the requirements for fair use or unless copying is permitted by a license or purchase agreement.
 - 2.1.1. The guidelines set forth below in Section 3 reflect the application of fair use to the off-air recording, retention, and use of television broadcast programs for education purposes.
 - 2.1.2. If the proposed recording or copying of an audio-visual work is not permitted under these guidelines or through a license or purchase agreement, the permission of the copyright owner shall be sought.
 - 2.1.2.1. After permission has been sought, copying may be undertaken only if permission is obtained and in accordance with the terms of the permission.

Section 3: Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes

- 3.1. These guidelines apply only to off-air recording by non-profit educational institutions.
- 3.2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first 45 consecutive calendar days after the date of recording. Upon conclusion of such retention period,

all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

- 3.3. 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 10 consecutive school days in the 45-calendar-day retention period.
- 3.4. Off-air recordings may be made only at the request of and used by individual instructors 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 instructor, regardless of the number of times the program may be broadcast.
- 3.5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of instructors under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
- 3.6. After the first 10 consecutive school days, off-air recordings may be used up to the end of the 45 calendar-day retention period only for teacher evaluation purposes (e.g., 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 purpose without authorization.
- 3.7. 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.
- 3.8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
- 3.9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Section 4: The TEACH Act and Distance Education

- 4.1. The TEACH Act was passed to address the needs of institutions providing distance education courses.
 - 4.1.1. It does NOT apply to traditional in-class courses taught on the campus.
 - 4.1.2. It applies only to students and teachers at non-profit educational institutions and gives them the right to transmit performances and displays of copyrighted works as part of a class IF certain conditions are met.
- 4.2. The TEACH Act applies only to accredited, non-profit educational institutions. The educational institution must
 - 4.2.1. establish a policy that governs the use of copyrighted materials,
 - 4.2.2. distribute accurate information to faculty and students on copyright,
 - 4.2.3. promote compliance with the copyright law, and
 - 4.2.4. provide the students with a notice that the materials may be covered under copyright.
- 4.3. If an institution meets all criteria in 4.1, then faculty can use the TEACH Act for distance education courses.
 - 4.3.1. The faculty member is responsible for determining what types of materials the act covers. Permitted materials include
 - 4.3.1.1. performances of non-dramatic literary or musical works and
 - 4.3.1.2. performances or displays of reasonable portions of other works.
Reasonable portions are defined as those amounts that would be used in a normal class setting
- 4.4. The following materials are not permitted under the TEACH Act:
 - 4.4.1. digital educational materials that are designed and sold to be used in a classroom setting through mediated instruction; the institution must purchase a copy of the work for this purpose, and
 - 4.4.2. copies acquired unlawfully, such as a copy of a DVD owned by another institution.

- 4.5. Even if the use of materials is permitted, additional criteria must be met.
 - 4.5.1. The use of materials must be under the direct supervision of the teacher.
 - 4.5.2. The use of materials must be a part of the class session, not something to be viewed before or after the class session; it must be part of a mediated instructional activity.
 - 4.5.3. The material must be directly related to and of importance to the teaching of the content.
 - 4.5.4. Transmission of the materials must be directly sent to and limited to the students in the class.
 - 4.5.5. Technological measures must be taken to ensure the material is not accessible beyond the class session and cannot be further disseminated.
 - 4.5.6. There must be no tampering with the copyright holder's technological measures for preventing retention and redistribution.
 - 4.5.7. Analog versions (paper, film, and video) may be converted to digital formats if
 - 4.5.7.1. a digital version is not available for purchase or lease, or
 - 4.5.7.2. the available digital version has technological measures that protect it from being used under the provisions of the TEACH Act.
- 4.6. The TEACH Act is complex, but it does allow the use of materials for distance education not covered under the original copyright laws.
 - 4.6.1. Faculty who wish to use materials under the provisions of the Act must ensure that their institutional policies are in place and that all other criteria are met.

Section 5: Use of Sound Recordings at Functions

- 5.1. Use of sound recordings at a non-teaching function is considered a “public performance” under U.S. and International Copyright Laws (Title 17, US Code).
- 5.2. In order to perform a copyrighted work publicly, the user must obtain performance rights from the copyright owner or his representative.
- 5.3. The Fair Use provisions of the copyright laws allow for playing recorded music in a face-to-face teaching setting only.

- 5.3.1. If the performance is part of a face-to-face teaching activity at a non-profit educational institution, permission is not required.
- 5.3.2. Permission is required when music is used as part of training seminars, conventions, or other commercial presentations.
- 5.4. Any other use of copyrighted sound recordings in campus activities is deemed outside of the fair-use provision and must adhere to the laws governing a public performance.

Section 6: Guidelines for Copying Computer Programs

- 6.1. Generally, the owner of a copyright in a computer program has exclusive rights in the program, including the right to use, reproduce, and create adaptations of the programs.
- 6.2. The use, reproduction, creation or adaptation of a computer program or its documentation without the permission of the copyright owner is a violation of federal copyright laws and could result in monetary and/or criminal liability.
- 6.3. Copyright laws allow the purchaser of a computer program to make one backup copy of the program; the backup copy may only be used if the original copy is no longer functional and must be destroyed when rights to use the original copy of the computer program end.
- 6.4. Programs obtained under a licensing agreement are not owned by the licensee and cannot be copied unless copying is authorized in the terms of the agreement.
- 6.5. If the proposed copying of a computer program is not permitted under the criteria set forth above, or through a license or purchase agreement, the permission of the copyright owner shall be sought.
 - 6.5.1. After permission has been sought, copying may be undertaken only if permission is obtained and in accordance with the terms of the permission, except as provided in item 4.4 of these regulations.

Section 7: Guidelines for Posting Material on the Internet

- 7.1. Any user of the computer network sponsored by Piedmont Community College, including but not limited to, faculty and students may post materials on a website associated with PCC only if:
 - 7.1.1. the user owns the copyright in the material, or
 - 7.1.2. the user has express permission from the owner of the copyright of the material to post the material, or
 - 7.1.3. the material is in the public domain, or
 - 7.1.4. the use of the material constitutes “fair use” as defined by the Copyright Act (for guidelines in Section II B. of this policy), or
 - 7.1.5. the material falls within another statutory exception.
- 7.2. The doctrine of fair use applies to the posting of material on the Internet as it does for the reproduction of print materials. However, because of the accessibility of the Internet, any user of the computer network sponsored by PCC who posts material on a website should limit the amount of material posted and restrict access as necessary.

Section 8: Guidelines for Research Uses

- 8.1. At the very least, an instructor may make, or cause to be made at his or her individual request, a single copy of any of the following for his or her scholarly research, for use in teaching, or in preparing to teach a class:
 - 8.1.1. a chapter from a book;
 - 8.1.2. an article from a periodical or newspaper;
 - 8.1.3. a short story, short essay, or short poem, whether or not from a collective work; or
 - 8.1.4. a chart, diagram, graph, drawing, cartoon or picture from a book, periodical, or newspaper.

- 8.2. These examples in 8.1 reflect the most conservative guidelines for fair use. They do not represent inviolate ceilings for the amount of copyrighted material that can be photocopied within the boundaries of fair use.
- 8.3. The following examples demonstrate situations in which increased levels of photocopying will continue to remain within the definition of fair use:
 - 8.3.1. The inability to obtain another copy of the work because it is not available from another source and cannot be obtained within your time constraints;
 - 8.3.2. The intention to photocopy the material only once and not to distribute the material to others; and
 - 8.3.3. The ability to keep the amount of material photocopied within a reasonable proportion to the entire work (the larger the work, the greater the amount of material which may be photocopied).
- 8.4. Most single-copy photocopying for personal use in research, even when it involves a substantial portion of a work, may well constitute fair use.

Section 9: Guidelines for Library Reserve Uses

- 9.1. At the request of a faculty member, the library may photocopy and place on reserve excerpts from copyrighted works in its collection in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching discussed above.
- 9.2. These guidelines apply to the library reserve collection to the extent that it functions as an extension of classroom readings or reflects an individual student's right to photocopy for his personal use under the doctrine of fair use.
- 9.3. In general, faculty members and librarians may photocopy materials for reserve room use for the convenience of students both in preparing class assignments and in pursuing informal educational activities.
- 9.4. If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, or an entire chapter from a book, or an entire poem. Requests for multiple copies on reserve should meet the following guidelines:

- 9.4.1. the amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level;
 - 9.4.2. the number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material;
 - 9.4.3. the material should contain a notice of copyright; and
 - 9.4.4. the effect of photocopying the material should not be detrimental to the market for the work.
- 9.5. For example, an instructor may place on reserve, as a supplement to a course textbook, a reasonable number of copies of articles from academic journals or chapters from trade books.
- 9.5.1. A reasonable number of copies will in most instances be less than six, but factors such as the length or difficulty of the assignment, the number of enrolled students, and the length of time allowed for completion of the assignment may permit more in unusual circumstances.
- 9.6. In addition, an instructor may also request that multiple copies of photocopied, copyrighted material be placed on the reserve shelf if there is insufficient time to obtain permission from the copyright owner.

Section 10: How to Obtain Permission

- 10.1. When a use of photocopied material requires permission, the user should communicate complete and accurate information to the copyright owner.
- 10.2. The American Association of Publishers suggests that the following information be included in a permission request letter in order to expedite the process:
 - 10.2.1. Title, author and/or editor, and edition of materials to be duplicated;
 - 10.2.2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material;
 - 10.2.3. Number of copies to be made;
 - 10.2.4. Use to be made of duplicated materials;

- 10.2.5. Form of distribution (classroom, newsletter, etc.); and
 - 10.2.6. Whether or not the material is to be sold.
- 10.3. The request should be sent, together with a self-addressed envelope, to the permissions department of the publisher in question.
- 10.3.1. The process of granting permission requires time for the publisher to check the status of the copyright and to evaluate the nature of the request.
 - 10.3.2. It is advisable, therefore, to allow sufficient lead-time to obtain permission before the materials are needed. In some instances, the publisher may assess a fee for the permission.
- 10.4. The Copyright Clearance Center also has the right to grant permission and collect fees for photocopying rights for certain publications.
- 10.4.1. Library staff or a faculty member may copy from any journal that is registered with the CCC, report the copying beyond fair use to CCC, and pay the set fee.

Legal Citation: This policy supports the U.S. Copyright Laws ([17 U. S. C. §§ 101-108](#) and [15 U. S. C. § 101](#)) and the Digital Millennium Copyright Act of 1998 (17 U.S. C. §§ 120)

https://www.copyright.com/Services/copyrighthoncampus/content/index_class.html (for Section 1)

History: Effective January 1992, revised January 2011, March 2021

Exhibit 2.16: Strategies for Determining Fair Use

The Four-Factor Fair Use Test

The fair use of a copyrighted work, including such use by reproduction in copies or photo records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the four factors to be considered shall include

- What is the character of the use?
- What is the nature of the work to be used?
- How much of the work will you use?
- What effect will this use have on the market for the original or for permissions if the use were widespread?

Courts look at the first three factors before evaluating the fourth. If the first three factors indicate that the use is likely fair, courts will not permit the fourth factor to convert an otherwise fair use to an infringing one. On the other hand, if the first three factors indicate that the use is likely not fair, courts are willing to consider lost revenues under the fourth factor. In this case, they do not have to assume the conclusion in order to reach it. They reach the conclusion based on good evidence that the use is not fair. This means that if a use is tipping the balance in favor of fair use after the first three factors, the fourth factor should not affect the results, even if there is a market for permissions, even if the owner would lose money because of the use.

The College does not condone photocopying instead of purchasing copyrighted works where such photocopying would constitute an infringement under the copyright law.

Instructions for securing permission to photocopy copyrighted works when such copying is beyond the limits of fair use appear at the end of this section. It is the policy of the College that the user (faculty, staff or librarian) must secure such permission whenever it is legally necessary.

Items in the Public Domain

- Any work **published** on or before December 31, 1925 is now in the public domain.
- But, if the work was published between 1923 and December 31, 1963, when a non-automatic "renewal term," existed, the copyright owner may not have renewed the

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

- After 1978, 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). Furthermore, publication is irrelevant. Works are protected whether they are published or not.
- Those works never published are protected for life of the author plus 70 years.

Links for additional information

- NC Community College System policy: <https://www.nccommunitycolleges.edu/sites/default/files/library-services/cclincintellectualpropertystatement1.pdf>
- The TEACH Act: <https://www.copyright.com/wp-content/uploads/2015/04/CR-Teach-Act.pdf>
- The Digital Millennium Act: <http://www.copyright.gov/legislation/dmca.pdf>