Copyright 101

Why Should I Care about Copyright?

As role models to and teachers of students, faculty members need to model good behavior regarding the ethical use of information. In addition, Clackamas Community College faculty members are required to abide by copyright law, whether sharing print or digital materials. As detailed in the *Clackamas Community College Copyright Manual* [1], faculty are prohibited from copying resources "not specifically allowed by the federal copyright law, fair use guidelines, license agreements or the copyright owner."

What Is Copyright?

The United States Copyright Office defines traditional copyright as "a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of 'original works of authorship,' including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works." [2] The goal of copyright law is to support innovation by compensating authors and publishers monetarily.

Can I Use Copyrighted Materials as an Educator?

Yes. Copyright law allows exceptions for educators through fair use. The fair use clause of copyright permits faculty to make and distribute copies of traditionally copyrighted materials without seeking permission from the copyright holder (i.e., author) in certain situations related to teaching, scholarship, and research.

Educators must consider the following four factors to determine if a copyrighted item fits under fair use:

1. the purpose of use;
2. the nature of the work used;
3. the amount and substantiality of the work used; and
4. the effect of the use upon the potential market for or value of the work used.

Only you can determine if your use is fair - not a librarian, not a faculty chair, not a dean, not a lawyer - just you. To guide you in this process, we created a *Fair Use Checklist* that you may use to determine if your use of copyrighted material fits under fair use.

How Do I Know If I Can Use Copyrighted Materials?

Unfortunately, there is no magic formula for determining if you can use copyrighted materials. So, how do you know? Use our *Fair Use Checklist* on the following pages to assist you.

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1. Copyright Advisory Committee. (1997). *Clackamas Community College Copyright Manual*. Available from www.clackamas.edu
2. United States Copyright Office. (July 2008). *Copyright basics*. Retrieved from http://www.copyright.gov/circs/circ1.pdf

Fair Use Checklist

How to Use the Checklist

The purpose of this checklist is to document a good faith effort to determine if use of another's work is fair use. Retain a copy of the completed *Fair Use Checklist* should a dispute arise. As you complete the checklist, consider the following:

- relative importance of the four fair use factors (i.e., purpose, nature, amount, and market value)
- degree to which the author's rights may be violated by your use

Then, as a whole, make a decision for or against fair use of the material.

1. Purpose

Favors Fair Use	Opposes Fair Use
☐ Teaching (e.g., copies for classroom use) ☐ Research ☐ Scholarship ☐ Criticism or commentary ☐ Use at a nonprofit educational institution ☐ Transformative use, creating a new work with a new purpose (e.g., parody or transformative technologies) ☐ Restricted access (e.g. to students or faculty) ☐ Parody	☐ Commercial use ☐ Profiting from use ☐ Entertainment ☐ Public showing in a non-educational setting ☐ Use at a for-profit educational institution ☐ Denying or omitting credit to the original author ☐ Unrestricted access (posted freely online) ☐ "Bad faith" use (e.g., sharing so individuals do not have to purchase the item)

Purpose refers to the reasons for and character of your *proposed* use of the item, including whether such use is of commercial nature or is for nonprofit educational purposes. Educational use often falls under fair use, while for-profit use never does. As you consider the purpose of your use of the material, consider if that purpose is fair enough for you to reasonably infringe upon the author's rights.

2. Nature

Favors Fair Use	Opposes Fair Use
☐ Item is a published work ☐ Item is factual or non-fiction-based ☐ Item is important to student learning objectives ☐ Non-consumable (i.e., to be used multiple times)	☐ Item is an unpublished work ☐ Item is highly creative (e.g., art, music, novels, films, plays, poetry, fiction) ☐ Consumable (e.g., workbook, test)

The nature of the copyrighted work refers to how creative and unique - and therefore copyrightable - the work is. The more creative the work, the more copyright protection it enjoys, and the less you are able to use it under the fair use clause. Consider if the work in question is a non-copyrightable fact or a very copyrightable creative work. Also consider if the work has been published. If it has not, then it is not yours to share with the public.

Fair Use Checklist *cont.*

3. Amount

Favors Fair Use	Opposes Fair Use
☐ Portion used is a small quantity of the item as a whole ☐ Portion used is not central or significant to the entire work ☐ Amount used is appropriate for intended educational purpose	☐ Portion used is a large quantity of the item as a whole ☐ Whole item is used ☐ Portion used is central to or "the heart of the work"

Amount refers to the portion used in relation to the copyrighted work as a whole - less is better. A fair amount is determined by your subjective interpretation. There is no quantifiable amount or percentage that favors fair use (a Court of Appeals struck down the popular "10% or one chapter" measure in 2015). Also, consider how important the excerpt is to the heart of the work or to the work as a whole. If the excerpt is foundational or could be considered "the heart of the work," then likely its use would not fit under fair use.

4. Market Effect

Favors Fair Use	Opposes Fair Use
☐ User owns lawfully purchased or acquired copy of original work ☐ Lawfully purchased copy includes a public performance license ☐ One or few copies made ☐ No significant effect on the market or potential market for copyrighted work ☐ One time use ☐ Out of print ☐ Unavailable for or difficult to purchase ☐ No product marketed by copyright holder similar to your use ☐ Item does not readily include a licensing mechanism (way to pay/seek permission for use) ☐ Restricted access (to students)	☐ Could replace sale of copyrighted work ☐ Significantly impairs market or potential market for copyrighted work or derivative ☐ Repeated or long-term use (e.g., multiple semesters) ☐ Readily available for purchase ☐ Reasonably available licensing mechanism for use of the copyrighted work (e.g., item is available in a database) ☐ Affordable permission available for using work ☐ Numerous copies made ☐ Unrestricted access (posted online or in other public forum)

Market effect refers to the impact your use may have upon the potential market for, or value of, the copyrighted work. Many courts assign the most weight and importance to this factor of fair use. Consider how your use may impact the author's profit potential. The more your use eliminates the need for others to purchase the work, the less fair your use is. Also consider the scope of your audience when sharing the item. Restricting item access to an educational audience in the classroom or a password-protected course management system favors fair use. Publicly posting an item online or sharing it at a public presentation does not favor fair use.

Fair Use Checklist *cont.*

Can I Copy or Share This Copyrighted Material?

If you reasonably believe that your use of the copyrighted work fits under fair use after completing the *Fair Use Checklist*, you may:

- make hard copies and distribute the work in class; or
- make electronic copies and distribute the work in your password-protected Moodle course page. Do not post material online in an open environment.

If you do not believe that your use of the copyrighted work fits under fair use after completing the *Fair Use Checklist*, you may:

- work with the CCC Bookstore to create a coursepack;
- list the item in your syllabus as a required text for students to purchase; or
- work with a librarian to find an alternate resource.