



Title: Copyright Compliance & Fair Use Guidelines for Library & Learning Environment	Policy No.: ADM 7.01	Date: 2/4/09 Rev.: 8/1/15, 8/1/2017, 8/1/2019
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Areas Affected: BSMCON employees, students, and guest Page 1 of 6

PURPOSE:

This policy’s purpose is to facilitate lawful use of copyright-protected materials in the Library and learning environment

- 1) by providing a summary of U.S. copyright law as it relates to the use of such materials (both physical and digital) in the learning environment and library
- 2) by providing guidelines and procedures for maintaining copyright compliance by checking for copyright permission to use these works
- 3) by informing individuals of accepted "fair use" interpretations.

All BSMCON employees, students and guests will observe the U.S. Copyright Act (title 17, U.S. Code) based upon the guidelines offered below. Questions about usage of copyright materials should be directed to the College librarian. Violations of the Act are to be reported to the Dean of Student Affairs’ office.

U.S. copyright law contains many gray areas, and the goal of this policy is to provide College administrators, faculty, librarians, students, employees, and others with a standard approach for addressing complex copyright issues. This policy covers learning environment issues such as photocopying, distance education and online course management systems. It also covers library uses of print and electronic reserves, and interlibrary loan (ILL) guidance. **This policy provides practical advice and procedures on copyright-related matters; however, it is not a substitute for legal advice, and proper legal advice should be obtained when necessary.** For additional information, refer to the copyright compliance support tools and resources on Bon Secours eLibrary at <http://spweb/keycommunities/elibrary/elibrary/Pages/Copyright-Compliance-Support.aspx>

DEFINITIONS:

Copyright Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If an individual is not the copyright holder for a particular work, as determined by the law, an individual must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

Reference Policy # _____

Approved by:

_____	<u>Dean of Student Services</u>	_____
_____	<u>Provost</u>	_____
Signature	Title	Date

Approval History:

Committees and Dates:
 Librarian – 2/4/09, 8/1/15, 4/17/2017, 2/18/2019
 Policy Committee – 4/17/2017, 2/18/2019

Protected Work The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that an individual may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform and publicly display their works. These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years.

Fair Use A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (whether for commercial or nonprofit educational use)
2. The nature of the copyright-protected work
3. The amount and substantiality of the portion used
4. The effect of the use upon the potential market for the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use. If an individual's use does not meet the above criteria and the work is protected by copyright, the individual probably needs to obtain permission to use the work from the copyright holder or its agent.

In 1998, the United States Patent and Trademark Office's Conference on Fair Use (CONFU) offered guidelines for the "fair use" of electronic materials in not-for-profit educational settings. Though these guidelines never become law, they are used extensively for reference.

In 1998, the Digital Millennium and Copyright Act (DMCA) became law. The purpose of this law was to elucidate copyright protections in the electronic arena. "Fair Use in the Electronic Age", a statement developed and endorsed in 2001 by representatives of the major academic research and professional associations, describes what these organizations feel represents fair use. The TEACH Act, made law in 2002, represents practical applications of the DMCA.

GUIDELINES:

Course Handouts Based on fair use analysis, course handouts fall into two categories; one that requires permission and one that does not. If the handout is a new work for which an individual who could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, an individual may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; an individual must obtain copyright permission to use the work. For online classes, please also see Distance Education and Course Management Systems on page 4 of this policy section.

Video in the Physical and Virtual Classroom Instructors often want to show videos or video clips in the physical or virtual classroom or embed or link them in the course management system. Permission to use others' videos in the physical classroom may differ from allowed uses in online courses. The Copyright Act and TEACH Act offer guidelines for determining permitted use. However, they do not afford blanket permission. Instructors should seek use permission on a case-by-case basis, and request assistance from the college librarian.

Reserves If the College library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the library must obtain copyright permission.

Photocopying in the Library It is permissible to photocopy copyright-protected works in the College library without obtaining permission from the copyright owner, under the following circumstances:

- **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the College library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research. As recommended by Section 108 of the Copyright Act, the library must display the register's notice at the place library users make their reproduction requests to the library.
- **Replacement of lost, damaged or obsolete copies.** The College library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on its computer but not placed on a public network.)
- **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by an individual's library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship and research, and the library must display the register's notice at the place library users make their reproduction requests to the library.

Photocopying for Students The College library may make reproductions for library users (students, faculty, etc.), provided the following criteria are met:

- The library makes one reproduction of an article from a periodical or a small part of any other work.
- The reproduction becomes the property of the library user.
- The library has no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.

Photocopying by Students Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

Interlibrary Loan (ILL) and Document Delivery. Interlibrary loan refers to material the College does not have access to. Requests are made to lending libraries for this material. There is no cost to the College for this shared material, and the College uses the National Network of Libraries of Medicine to procure this material. The College library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. The College attempts to follow the CONTU guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many under CONTU.

Document delivery refers to material to which the College does have access. Requests for journal articles to which the library does have access, or requests for books that the Library owns, are considered document delivery requests.

Distance Education and Course Management Systems In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude educational institutions have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems. The copyright requirements for TEACH and course management system postings are similar to those of physical classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission; an individual must obtain copyright permission. *The Annual Copyright License from Copyright Clearance Center is helpful in clarifying the occasions when specific permission must be obtained.

Obtaining Copyright Permission. Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. Once an individual has identified the materials an individual wants to use and determined that copyright permission is required, an individual must locate the copyright holder. There are two primary options for obtaining permission to use the work. An individual may contact the copyright holder directly or an individual may contact Copyright Clearance Center.

Information Needed for a Permission Request

The copyright holder or its agent will require the following information in order to provide an individual with permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which an individual wish to reproduce the item (research, commercial, educational, etc.)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

The College annually renews an Academic Copyright License from Copyright Clearance Center (CCC). This license allows for the copying and distribution or transmission of articles or portions of books, for educational purposes, and within limitations. There is an established process for obtaining copyright permission through Copyright Clearance Center, and the CCC makes compliance extremely easy: simply drop the name of the journal or book into the CCC search box, and permission for academic use (to either photocopy or share content electronically) is either given or denied. The URL for this process is rightfind.copyright.com.

If permission is denied, CCC facilitates contacting the copyright owner for permission to use the material. It is best to obtain permission in writing (including e-mail) and to ensure that the individual keeps a copy of each permission form or letter. The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that an individual wishes to use the materials.

Additional References

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- 13) University of Minnesota Libraries. (2016). Copyright services: Teaching: The good news! Retrieved from <https://www.lib.umn.edu/copyright/teaching-good-news>
- 14) University of Minnesota Libraries. (2016). Copyright services: Specific uses: Teaching. Retrieved from <https://www.lib.umn.edu/copyright/teaching>
- 15) U. S. Copyright Office, Library of Congress. (n. d.) Circular 21: Reproduction of copyrighted works by educators and librarians. Retrieved from <https://www.copyright.gov/circs/circ21.pdf>

This Copyright Policy, in large part, directly reflects the template offered freely by the Copyright Clearance Center (2015).