

# WHARTON COUNTY JUNIOR COLLEGE

## COPYRIGHT & FAIR USE



PREPARED BY THE DEPARTMENTS OF  
DISTANCE EDUCATION AND LIBRARY  
SERVICES FOR THE OFFICE OF THE  
VICE PRESIDENT OF INSTRUCTION  
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## USE OF COPYRIGHTED WORKS FOR EDUCATION AND RESEARCH

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Consistent with WCJC Regulation 277 (*Copyright, Fair Use and T.E.A.C.H. Act*), the Distance Education Department and the Library staff have developed guidelines and policies for the use of copyrighted materials. These guidelines and policies address library and educational fair use as well as fair use exceptions for research and scholarly work.

### COPYRIGHT

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A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. "Copyright" literally means the right to copy but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright. (*U.S. Copyright Office definition at <http://www.copyright.gov/help/faq/definitions.html>*)

Copyright is a federal law (17 U.S.C. 101 et. seq.). It allows authors to control the use of their works for a limited period of time. Once that time period has expired, the public is allowed to freely use the works without paying royalties or obtaining permission from the copyright holder. The last major revision to the copyright law of the United States was the **Copyright Act of 1976**. It set forth the law that, with some small provisions, is still in effect today.

### WHAT IS COVERED?

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Please note: the items in 'not covered' may be covered by other types of law such as licensing, patent, trademark, etc.

<b>COVERED:</b>	<b>NOT COVERED:</b>
<b>ORIGINAL WORKS OF AUTHORSHIP IN A FIXED MEDIUM OF EXPRESSION</b>	Ideas
Poetry	Titles
Prose	Names
Computer programs	Short phrases
Artwork	Works in the public domain
Music-written or recorded	Factual information
Animations	Logos and slogans (Trademark law)
Movies and videos	Blank forms that only collect information
Web pages	URL's
Television broadcasts	License
Choreography	Patents
Architectural drawings	Systems
Photographs	Procedures
and more	Measuring devices
	Works of the U.S. government

## WHAT IS PROTECTED AND FOR HOW LONG?

### HOW CAN YOU TELL IF SOMETHING IS COPYRIGHTED?

The work must be an original work that is fixed in a tangible medium of expression. All works in a fixed medium, whether published or unpublished, are copyright protected. This includes:

- Literary, musical and dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic and sculptural works
- Sound recordings
- Motion pictures and other AV works
- Computer programs
- Compilations of works and other derivative works
- Architectural works
- The copyright symbol is not necessary for a work to be copyrighted--it is automatic. Works do, however, need to be registered with the Copyright Office before legal action can be taken.
- Works that are not copyrighted include:
  - Ideas, procedures, methods, systems and processes (these can, however, be protected by patent law)
  - Titles, names, short phrases and slogans (again, patent or trademark law)
  - Facts, news and research
  - Works produced by United States government employees and some state agencies
  - Works in the public domain
  - Works in which no copyright is claimed

### HOW LONG IS A WORK PROTECTED?

<b><i>WORKS PUBLISHED BEFORE 1923</i></b> Public domain	<b><i>WORKS PUBLISHED BETWEEN 1923 &amp; 1963</i></b> First term of 28 years (with notice)  Renewal term of 67 years (affirmative renewal required)
<b><i>WORKS PUBLISHED BETWEEN 1964 &amp; 1978</i></b> First term of 28 years (with notice)  Renewal term of 67 years (automatic)	<b><i>WORKS PUBLISHED AFTER 1978</i></b> Life of the author plus an additional 70 years. For anonymous pseudonymous, or commercial works, protection extends 95 to 120 years  Registration not required  Notice not required

(\*Information and two charts above are adopted from UHV/VC library <http://libguides.uhv.edu/Copyright> and Cornell University Copyright Office <http://copyright.cornell.edu/resources/publicdomain.cfm>)

## FAIR USE

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The Fair Use Doctrine is a component of U.S. Copyright law ([Section 107](#)). It allows for the use of copyrighted materials, without gaining authorization, based on the weighing of four factors:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- The effect of the use upon the potential market for or value of the copyrighted work.

No one factor alone determines a person's right to use a copyrighted work without permission.

Notice that the Fair Use Doctrine does not grant permission for use of copyrighted material simply on the grounds that it is to be used for educational purposes. For example, copying and distributing an entire textbook to students would be illegal, because it violates factors 3 and 4. But copying one chapter *might* be acceptable.

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### PROVISIONS OF FAIR USE

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**There are no set guidelines that are universally accepted.** Congress has set forth four provisions to be considered in deciding whether copying falls under Fair Use:

**1. The purpose and character of the use** (is it a non-profit educational purpose?)

The first factor asks primarily whether the use is of a commercial nature or whether it is intended for educational use. This provision almost always favors the school:

<b><i>FAVORS FAIR USE</i></b>	<b><i>FAVORS PERMISSION</i></b>
Nonprofit	Commercial
Educational	For profit
Personal	Entertainment
Teaching	
Criticism and comment	
Scholarship and research	
News reporting	

**2. The nature of the copyrighted work** (is it more creative or factual?)

Factual material has little protection since facts cannot be copyrighted. A list of common facts such as the 10 longest rivers cannot be copyrighted (however the format can). Highly creative material (novels, poems, artwork, web page design, etc.) would be much more likely to be protected.

<b><i>FAVORS FAIR USE:</i></b>	<b><i>FAVORS PERMISSION</i></b>
Fact	Creative
Published	Unpublished

**3. The amount and substantiality used** (how much of the work are you copying and is it the "meat" of the work?)

If planning to copy the entire poem, book, article, webpage, etc., then the other 3 factors must be met. The more material copied, the less leeway allowed. The substantiality of the excerpt is important also. Even if using only a small part of a work, if the part is the "creative essence" of the work, it is copyrighted. The latest court ruling states a 10%/1 chapter limit on books.

<i><b>FAVORS FAIR USE</b></i>	<i><b>FAVORS PERMISSION</b></i>
Small amount	Large amount Heart of the work

**4. The effect of the use on the potential market for the work**

This is the factor that the courts place the most weight. Did the use deprive the copyright owner of a sale? If everyone made similar use of the material, what effect would it have? The GSU decision considers whether there is a licensing market for the item.

<i><b>FAVORS FAIR USE</b></i>	<i><b>FAVORS PERMISSION</b></i>
No effect Licensing/permissions unavailable	Major effect Work is made available to world

If the balance weighs in favor of fair use, then the work can be used without permission. **All educational use is not automatically fair use.** Fair use applies to all mediums of transmission, so it may be applied regardless of the technology.

(Information and four charts above adapted from **UH/UHV Library**  
<http://libguides.uhv.edu/content.php?pid=334271&sid=2734900>)

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THE T.E.A.C.H. ACT

The ***Technology, Education and Copyright Harmonization (TEACH) Act*** was signed into law in October, 2002.

The TEACH Act amends Sections 110(2) and 112 of the Copyright Act of 1976 to give instructors at accredited nonprofit educational institutions greater flexibility to use third party copyrighted works in online course delivery.

The bill permits the display and performance of virtually all types of works during online instruction without the consent of the copyright owner, provided that:

- the online instruction at an eligible institution is mediated by an instructor;
- the transmission of the material is intended only for receipt by students enrolled in the course, regardless of where the students are physically located;
- the institution employs measures to prevent "retention of the work in accessible form by recipients of the transmission for longer than the class session;"

- the institution employs measures that limit the transmission of the material to students enrolled in the particular course and precludes unauthorized student retention and/or downstream redistribution “to the extent technologically feasible;”
- use of the material is clearly for educational, not entertainment purposes

Specifically allowed:

- Performances of non-dramatic literary works, such as readings from a novel, textbook, or poetry;
- Performances of non-dramatic musical works, such as playing a recording or actually performing a new pop song or symphony;
- Performances of any other work, including dramatic and audiovisual works in "reasonable and limited portions;"
- Displays of any work "in an amount comparable to that which is typically displayed in the course of a live classroom session."

Specifically excluded:

- Works that are marketed "primarily for performance or display as part of mediated instructional activities transmitted via digital network;"
- Performances or displays given by means of copies that might not have been lawfully made.

(See Appendix 1 – TEACH ACT Checklist)

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## DIGITAL MILLENNIUM COPYRIGHT ACT

The DMCA (**Digital Millennium Copyright Act**) was enacted in 1998 and prohibits the circumvention of protection devices. It also prohibits the manufacturing and selling of circumvention devices used to defeat copy control measures. There is no Fair Use under the DMCA for evaluation or educational purposes.

The DMCA did give libraries the right to make up to three copies of out of print items if a copy is damaged, lost or stolen. Computer programs are the only media for which libraries are allowed to make a back-up copy (as long as only one copy circulates).

(\*Information adapted from U.S. Copyright office <http://www.copyright.gov/legislation/dmca.pdf> and UHV/UV Library <http://libguides.uhv.edu/content.php?pid=334271&sid=2735063>)

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## COPYRIGHT POLICIES

### **Distance Education**

All faculty utilizing WCJC’s learning management system (LMS) shall provide notice to students that materials used in connection with the course may be subject to copyright protection.

### **Sample Notification**

The materials on this course website are only for the use of the course instructor and the students enrolled in this course for purposes associated with this course. Some of these website materials may be subject to copyrights held by third parties. None of these materials may be (i) retained after the course term expires, (ii)

further disseminated, or (iii) accessed by or made available to others. Students with questions about the permissibility of use of materials on this website are advised to consult the course instructor.

### Library:

Libraries and archives are authorized to furnish, on request, one photocopy or other reproduction under certain conditions specified in the law. One of the specified conditions is that the photocopy or reproduction is not to be "*used for any purpose other than private study, scholarship or research.*" If a user makes a request for and/or later uses a photocopy or reproduction for purposes in excess of "**Fair Use**" the user may be liable for copyright infringement. WCJC College Library staff reserve the right to refuse to accept a copying request if fulfillment of the request would involve violation of the copyright law.

Please note that WCJC library staff will verify streaming rights have been acquired for audiovisual materials that are available for purchase in a digitized format, even if the library already owns them in VHS or DVD formats, including materials cataloged in the college media collection. If not available in digitized format, permission can sometimes be purchased to stream videos, but for a limited student audience only, with appropriate password protection. This procedure is to comply with **Code of Best Practices in Fair Use for Academic and Research Libraries** (ARL), (<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>)

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## GUIDELINES

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### GENERAL GUIDELINES – FAIR USE

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Make Sure of the Following:

- The use is for educational purposes
- The use is germane to the instruction of the topic.
- The copy is legally obtained.
- When possible, use factual works, but when necessary, creative works can be used to illustrate a point or as a basis for criticism or commentary. Excerpts from periodicals may also be used.
- Post copyright notice on documents, in syllabus, and in LMS where appropriate.
- Minimize the number of items used from one author.
- Do not use over and over - either obtain permission or use another author after use.
- Remember – Fair Use is NOT a substitute for textbooks

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### FAIR USE FOR FACE-TO-FACE COURSES

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Allowable Single Copies for Teachers

- A single copy of a chapter from a book
- A single copy of an article from a periodical or newspaper
- A single of a short story, short essay, or short poem
- A chart, graph, diagram, picture or cartoon from a book, periodical or newspaper

But do not

- Create your own anthology or book from “pieces” gathered
- Copy from works that are “consumable” like workbooks, exercises, tests
- Substitute copying for purchasing
- Copy the same item from term to term



- Make copies of copyrighted, syndicated cartoon characters

#### Multiple copies for classroom use

- Make only one copy for each student in the class
- Each item copied must be for classroom use or discussion
- Each copy must include a notice of copyright (it can be simple)
- Teachers must actually use the copies as part of instructions, and not simply as a handout

#### Three tests for copying

- **Test 1: Brevity**
  - Poetry – All, if less than 250 words. If longer than 250 words, only 250 words can be copied.
  - Prose – All, if less than 2,500 words. For other, no more than 1,000 words or 10%, whichever is less.
- **Test 2: Spontaneity**
  - The individual teacher must initiate the making of multiple copies.
  - The decision to copy must be close to the time of use. Otherwise, permission must be requested.
- **Test 3: Cumulative Effect**
  - Copying must be done for only one course.
  - Limits – generally 3 or fewer items from a collective work; 3 or fewer items from one periodical volume.
  - No more than 9 items may be copied in multiples per course during one class term.
  - Current news articles from newspapers or magazines are exempt from this.

#### Copies for File Cabinet

- Illegal to make copies and put them in a file cabinet.
- Acceptable use to include original magazine articles or pictures cut out of a magazine.

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### FAIR USE FOR ONLINE COURSES

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#### Remember - everything on the Internet is copyrighted.

- Documents on the Web (and other digital formats) are easier to reproduce and distribute, but that does not change the copyright.
- Digital content is still content – and thus copyrighted. Copying or reproducing without permission may be illegal.
- Notification of copyright status is not required
- Large portions of documents, images and Web sites must not be taken without permission.
- Small portions (as with print materials) can be used by teachers in class.
- Many Web pages grant permission to educators automatically.
- If in doubt, request permission to use – usually an e-mail address is posted on the site.

#### Is linking to something on the Web a copyright violation?

- No – a hyperlink from one Web page to another is not a copy of the original work. (Best Option, where available!) This includes links to videos viewed on websites.

## SOFTWARE

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(See WCJC Reg. 146 at <http://www.wcjc.edu/About-Us/documents/regs/REG146.pdf>)

## OBTAINING PERMISSION

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Remember - If uncertain, ask permission.

How to obtain copyright permission:

- Make requests far enough in advance –
  - For print materials, a month to 6 weeks.
  - For internet information, a week should suffice.
- Obtaining Permissions
  - Include the complete citation (author, title, source, publication year, pages)
  - Statement that purpose is for educational use
  - Define number of copies needed or number of students who will use the item(s)
  - Describe length of time for intended use (10 weeks on a secure course website; use for 1 academic year, etc.)
  - Note that:
    - Permission may be granted or denied
    - You may need to pay royalties or choose another article
- Where to Send Requests
  - Research through Library of Congress Copyright Office: <http://www.loc.gov/copyright>
  - Copyright Clearance Center\*
    - U.S.-based rights broker: (<http://www.copyright.com>)
    - Has agreements with most standard U.S. commercial and academic publishers. Sets the rate structure and any restrictions on paper copies of each work.
    - Also handles digital permissions through its Electronic Course Content Service.
    - Can simplify and streamline permissions.
- The University of Texas Crash Course on Copyrights – Maintains an extensive listing on where and how to obtain permissions based on the medium (e.g. movies, plays, images etc.): (<http://copyright.lib.utexas.edu/permisn.html> )

**\*Note:** WCJC will evaluate faculty needs and consider getting an “*annual copyright license for academic institution*” through a centralized service for requesting permissions and paying royalties, for example, the Copyright Clearance Center (CCC) at <http://www.copyright.com/content/dam/cc3/marketing/documents/pdfs/AACLProductSheet.pdf>

## PERMISSION TO USE STUDENT WORK

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Student work submitted to WCJC courses are also entitled to copyright protections (see WCJC Regulation 276 regarding student work created using WCJC resources). Before using student work (e.g., using student papers as examples for subsequent semesters – even if identifying information is removed) the instructor should obtain written permission from the student for such use (see Appendix 2 Permission to Use Student Work).

## APPENDIX 1 – TEACH ACT CHECKLIST

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- My institution is a nonprofit accredited educational institution or a governmental agency
- It has a policy on the use of copyrighted materials
- It provides accurate information to faculty, students, and staff about copyright
- Its systems will not interfere with technological controls within the materials I want to use
- The materials I want to use are specifically for students in my class
- Only those students will have access to the materials
- The materials will be provided at my direction during the relevant lesson
- The materials are directly related and of material assistance to my teaching content
- My class is part of the regular offerings of my institution
- I will include a notice that the materials are protected by copyright
- I will use technology that reasonably limits the students' ability to retain or further distribute the materials
- I will make the materials available to the students only for a period of time that is relevant to the context of a class session
- I will store the materials on a secure server and transmit them only as permitted by this law
- I will not make any copies other than the one I need to make the transmission
- The materials are of the proper **type and amount** the law authorizes:
  - Entire performances of nondramatic literary and musical works
  - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
  - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- The materials are not among those the law specifically excludes from its coverage:
  - Materials specifically marketed for classroom use for digital distance education
  - Copies I know or should know are illegal
  - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session
- If I am using an analog original, I checked before digitizing it to be sure:
  - I copied only the **amount** that I am authorized to transmit
  - There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way **the statute authorizes**

Source: University of Texas: Crash Course on Copyrights. The Teach Act (<http://copyright.lib.utexas.edu/teachact.html>)

## APPENDIX 2 – PERMISSION TO USE STUDENT WORK

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WCJC students own the copyright in the works they produce for their classes and their permission is required to use their work for any reason unrelated to the evaluation of their class performance.

### Authors/Creators

Student Name \_\_\_\_\_

Student Name \_\_\_\_\_

Student Name \_\_\_\_\_

### Title of Work

Course Name \_\_\_\_\_

Course Number \_\_\_\_\_ Section \_\_\_\_\_

Period of Consent From \_\_\_/\_\_\_/\_\_\_ To \_\_\_/\_\_\_/\_\_\_ or  Perpetual Consent

### Granting Permission

I (we) the individual(s) listed above hereby authorize the following individuals, departments, and/or institutions to use my work as described below:

#### *Instructor(s)*

Name \_\_\_\_\_

Name \_\_\_\_\_

#### *Department*

Name \_\_\_\_\_

#### *Wharton County Junior College*

All instructors and departments at WCJC

### Types of Uses

Please check all uses to which you agree:

- Create physical copies for course packets, classroom use, placing on print reserve, etc.
- Create digital copies to be posted to WCJC's course management system (e.g., Blackboard)
- Create digital copies to be posted on open internet sites
- Perform the work (e.g., plays, sheet music, songs, etc.)
- Other: \_\_\_\_\_

**Attribution**

- I (we) wish to be recognized as creator(s) of the work (your name will be placed on the work).
- I (we) wish to remain anonymous (all identifying information, including your name, will be removed from the work).

**Certification of Authorship**

I (we) the individual(s) listed above attest that I (we) am (are) the owner(s) of the copyright in the work identified above, and that this work is not subject to any type of restriction (e.g., copyright has also been given to someone else) that would prevent its use consistent with this permission. I (we) also attest that all aspects of the work are original to me (us) and have not been copied from other source(s). I (we) understand that I (we) retain the copyright in this work outside the permission granted here.

Student Name (print) \_\_\_\_\_ Signature \_\_\_\_\_

Student Name (print) \_\_\_\_\_ Signature \_\_\_\_\_

Student Name (print) \_\_\_\_\_ Signature \_\_\_\_\_

(All authors/creators of the work must be listed; use additional sheets if needed)

**Instructor:** Provide a copy of this completed form to the student(s) and maintain a copy for your records.