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## **II. INTRODUCTION (Purpose and Intent)**

The University of South Florida System (USF System) is dedicated to instruction, research and service based on the highest standards of discovery, creativity, and intellectual attainment. It is the policy of the USF System that its faculty, staff and students carry out their scholarly work in an open and free atmosphere that is consistent with applicable laws and USF System policy.

As such, the USF System is committed to complying with all applicable laws regarding copyrights as set forth in the United States Code, Title 17 (the “Copyright Act”), and supports responsible use of copyrighted material as statutorily exempted by §110(1) and (2) of the Copyright Act (Face-to-Face Teaching Exemption and the “Technology, Education and Copyright Harmonization Act” or “TEACH Act”, respectively) and further supports the responsible and good faith fair use of copyrighted materials in accordance with §107 of the Copyright Act (“Fair Use”).

## **III. GENERAL PRINCIPLES OF COPYRIGHT LAW**

### **A. What Is a Copyright and What Does It Protect?**

#### **1. Types of Work Protected**

Copyright law protects "original works of authorship," that are "fixed in a tangible medium." This protection is available for both published and unpublished works. Copyrightable works include the following categories:

- Literary works (including software and "compilations")
- Musical works (including any accompanying words)
- Dramatic works (including any accompanying music)
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works (including architectural plans)
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

## **2. Rights That Are Protected by Copyright**

Under copyright law, copyright owners have the exclusive right to do (and authorize others to do) certain things with respect to their copyrighted work, including: make copies of the work, distribute copies of the work, display or perform the work publicly, make derivative works, and transmit the work electronically.

### **B. Works That Are Not Protected by Copyright**

Several categories of material are generally not eligible for federal copyright protection. Such materials may be used freely without regard to copyright protections. These include among others:

- Works in the public domain. For example, most government works are in the public domain and may be freely used. All copyrighted works will eventually fall into the public domain. Copyright protection generally lasts for the life of the author plus 70 years.
- Works that have *not* been fixed in a tangible form of expression, (for example, improvisational speeches or performances that have not been written or recorded).

- Titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.
- Works consisting *entirely* of information that is common property and containing no original authorship (for example: standard calendars, height and weight charts, tape measures and rulers, and lists or tables taken from public documents or other common sources).

#### **IV. USE OF COPYRIGHTED WORKS BY FACULTY, STAFF AND STUDENTS**

The USF System supports the responsible use of copyrighted material as statutorily exempted for face-to-face and distance teaching activities, and for the good faith exercise of full fair use rights by faculty, librarians, staff and students in teaching, research and services activities.

However, except as allowed by law, it is a violation of law and this Policy for USF System faculty, staff or students to use copyrighted material without proper purchase or to reproduce, distribute, display publicly, perform, digitally transmit, or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

As such, appropriate methods of using copyrighted material are as follows:

##### **A. Obtaining the Right to Use Material by Proper Purchase**

Unless you have the copyright owner's permission or your activity is covered by a legal exemption (as discussed below), faculty, staff and students may not copy, reproduce or distribute copyrighted material. Faculty, staff and students must purchase appropriate copies of all material needed for classroom activities. Purchasing a copy of copyrighted material only provides the right to use that copy for personal use. Purchasing a copy does not provide the right to make and distribute copies of the material.

## **B. Obtaining Permission of the Owner**

Except when the activity is covered by a legal exemption (as discussed below), faculty, staff and students of the USF System must obtain permission from the copyright owner for any use that involves the copying and distribution of copyrighted work to others. A standard permission request is attached. **Permission Request Form**

Permission may also be obtained by paying appropriate license fees through the Copyright Clearance Center or through your campus or local printing outlet.

## **C. Face-to-Face Teaching Exemption**

Section 110 of the Copyright Act allows faculty to use or display copyrighted materials during face-to-face teaching activities. Such use does not require the owner's permission. The exemption applies as long as there is: (i) no direct or indirect admission charge; (ii) it is a regular part of the instructional activities; and (iii) it is directly related to the teaching content. Note, however, this exemption does not permit copying or distributing a work – only the display, teaching and/or performing. (See Section IV.B. of this Policy for “Additional Guidelines for Classroom Copying.”)

## **D. Fair Use Exemption**

The “Fair Use” statutory exemption allows certain specified uses of limited portions of copyrighted material without requiring permission of the copyright holder. Fair use allows faculty to make copies of limited portions of a copyrighted work for non-profit educational purposes.

## **V. FAIR USE GUIDELINES**

### **A. Elements of Fair Use—Good Faith Consideration Required**

USF System faculty or staff who propose to make fair use of copyrighted material must consider four statutory factors to be weighed in making a fair use analysis. Faculty or staff must make a good faith advance determination based on these four factors:

**1. What is the character of the use?**

- Is it for an educational purpose?
- Educational purposes are more likely to be considered fair use.

**2. What is the nature of the work to be used?**

- Is the work primarily imaginative or factual?
- Use is more likely to be considered fair if the work is more factual in nature.

**3. What is the amount and substantiality of the portion to be used?**

- Is it a small portion or the whole work?
- Using a portion of the work is more likely to be considered a fair use.

**4. Will the use negatively affect the value of the copyrighted material?**

- Does the copied material compete with potential profits of the copyright owner?
- An instance is more likely to be considered fair use if it has no impact on potential profits of the copyright owner.
- Repeated use tends to affect market value.

**B. Additional Guidelines for Classroom Copying**

The following guidelines will assist you in determining if your use of copyrighted materials is permissible. The outer limits of fair use may reach further than the limitations suggested by these guidelines. When material sought to be copied falls outside the scope of the guidelines, faculty and staff should secure permission to copy from the copyright owners.

1. A single copy of material to be used for teaching purposes is acceptable.
  
2. Use only a small amount of the copyrighted material in relation to the whole work – for example, a single chapter of a book, an article, or a few photos from a larger collection.
  
3. Making multiple copies is acceptable provided that:
  - The number of copies does not exceed more than one copy per student.
  - The inspiration and decision of the teacher to use the work and the moment of its use should be reasonably close in time.
  
  - The work includes a notice of copyright.
  
4. Multiple copying and distribution of copyrighted material should not be substituted for the purchase of books by the students.
  
5. If copies of copyrighted material will be used in the classroom or put on reserve in the library for multiple semesters, then obtain permission from the copyright owner.

6. Obtain permission and/or pay appropriate license fees to use copyrighted material for course packs or other material used for non-classroom study purposes.
  
7. Do not copy and distribute consumable materials such as workbooks, standardized tests, test booklets, etc.

**C. Additional Guidelines for Using Audiovisual, Literary and Musical Works**

A teacher may perform, display, or otherwise use motion pictures and other audiovisual works, or recorded copies thereof, and literary or musical works in the classroom, provided:

1. The use, performance or display is in the normal and regular course of teaching activities and not for entertainment purposes;
  
2. All recorded copies of audiovisual works are lawfully made;
  
3. No transmission is made beyond the place where the copy is located (i.e. outside the building or general area of classroom);
  
4. The use is limited to students enrolled in the course;
  
5. The purpose is strictly educational in nature, not for the recreation and/or entertainment of the audience; and

6. The following restrictions are observed in the off-the-air recording and use of television and cable programs:
  - a) The program can be recorded only once by or at the request of an individual teacher, even if the program has been broadcast numerous times, and must include the copyright notice;
  - b) The program must be used within ten school days of its recording and can be used only twice during that period once as a teaching aid and once for reinforcement;
  - c) The copy must be erased or destroyed at the end of forty-five school days after recording (during the last thirty-five days, the program can be used only by the teacher for evaluation purposes); and
  - d) Recorded programs may not be physically or electronically combined or merged to create teaching anthologies or compilations, and may not be altered from their original content.

## **VI. ONLINE AND DISTANCE LEARNING ACTIVITIES**

Copyright laws and Fair Use principles also apply to Online and Distance Learning Courses. However, a newer law called the TEACH Act also applies to such courses, but for slightly different uses of copyrighted materials.

Traditional online course formats, such as Blackboard, often include posting copyrighted materials for students to use during the online course. Faculty or staff use of Blackboard or similar formats should ensure that the use of such material complies with Fair Use principles or is used with permission of the copyright owner.



The TEACH Act applies to secondary transmissions of a copyrighted work within a teaching performance. For example, when a professor's teaching performance is being recorded and subsequently transmitted online, and if that professor is also showing a movie during that performance, then the TEACH Act applies.

#### **A. General Principles of the TEACH Act**

1. The TEACH Act (§110(2) of the Copyright Act) extends the face-to-face teaching exemption to distance learning activities.
2. The TEACH Act allows faculty to use copyrighted materials during the act of teaching when the teaching performance is then transmitted via the Internet or video.
3. The TEACH Act only applies to works that an instructor would show or play during class. Any uploading of material for study purposes must otherwise comply with copyright laws, including fair use principles.
4. Provided that the requirements of the Act are followed, transmissions (via Internet or video) of teaching performances using copyrighted material may be made without obtaining permission from the copyright owner.

#### **B. Guidelines for Distance Education Courses Under the TEACH Act**

##### **1. The performance or display of copyrighted material must be:**

- a) A regular part of mediated instructional activity.
- b) Made by, at the direction of, or under the supervision of the instructor.
- c) Directly related and of material assistance to the content of the course.

##### **2. The following technological restraints must be in effect:**

- a) The content must be accessible only to those students who are enrolled in the course;
- b) The content must be accessible only for the duration of a class session;
- c) To the extent technologically possible, the content must be protected from further distribution; and

- d) To the extent technologically possible, the content must not be subject to retention by students.

**3. All material displayed must contain a notice similar to the following:**

The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. The materials on this course website may be protected by copyright; any further use of this material may be in violation of federal copyright law.

**4. Guidelines for complying with the TEACH Act:**

- a) Notify students that works used are subject to copyright protection.
- b) Supervise the digital performance or display. Make it an integral part of your instructional activity.
- c) Work with USF System Information Technology to limit access to the works.
- d) Reading excerpts from books, playing an excerpt from a piece of music, showing a photograph or a still from a motion picture is generally acceptable.
- e) Do NOT upload material such as textbooks, course packs or other resources typically purchased by students to review outside of the classroom unless permission has been received by the owner or such use otherwise complies with Fair Use principles.
- f) Do NOT transmit or upload materials specifically marketed as distance education courses.
- g) Do NOT use pirated works or works that you have reason to know were illegally made.
- h) Do NOT play an entire motion picture or act out a performance of an entire play during a class that will then be transmitted. Only a reasonable and limited portion of these types of works can be used.

**VII. COURSE PACKS AND COURSE RESERVES**

**A. Guidelines for Printed Course Packs and Course Reserves**

1. Materials may be copied and placed in course packs or made available for course reserves when they are:
  - In the public domain; or
  - Used with permission from the copyright holder; or
  - Used under the provisions of a contract or license agreement, noting that agreements may differ from, and often take precedence over, what is allowed under copyright law; or
  - Used under the provision of Fair Use—faculty must consider the four part fair use test.
2. The Copyright Clearance Center (CCC) can grant you permission to use a wide number of materials for a fee. Faculty can contact the Copyright Clearance Center directly or their chosen printing shop for assistance.

**B. Guidelines for Electronic Course Packs and Other Online Materials**

1. Faculty and students may post or link to copyrighted materials on password protected course sites in compliance with copyright and fair use principles.
2. Prior to scanning and digitizing copyrighted materials, faculty should review University Libraries' holdings to determine if a pre-existing license for the content already exists. Similarly, instead of creating a digital copy of a work, where possible, faculty members are encouraged to provide links to the content owner's website, such as a news-service, or alternatively to a public domain site.
3. The faculty member must consider whether use of the work is fair use—such as a single, recent news article, or a few images; or whether permission is necessary from the copyright owner—such as a few chapters from a textbook. If permission is necessary to place a work in a print course pack, then it is necessary to place it on electronic reserve.

**VIII. USE OF MATERIALS OBTAINED FROM THE INTERNET**

**General Guidelines**

- A. **Copyright Law Applies.** The general rule that copyright law protects all works "fixed in any medium" also applies to documents on the Internet and the World Wide Web. If you wish to reproduce Internet works, you must follow copyright law, be within fair use, and follow the guidelines above in the same manner as if the document were printed on paper.
- B. **Fair Use Applies.** If you wish to make multiple copies of an Internet work or otherwise wish to use the work in a manner which falls outside the fair use exceptions outlined in these guidelines, you must contact the author of the Internet work and obtain reproduction permission from that individual.

- C. **Exercise Caution.** Be especially careful of copyright/fair use principles when downloading material from the Internet. The material may have been placed on the Internet without the author's permission.
- D. **Do Not Circumvent Access Control.** Except in very limited circumstances, it is a violation of law to circumvent an access control mechanism and use copyrighted material — even if the use would otherwise be fair.
- E. **Do Not Violate USF System Computing Policy.** It is the responsibility of all USF System students, faculty and staff to use information technology and computer resources in a responsible, ethical and lawful manner. Any member of the USF System community who abuses these resources may have engaged in unacceptable conduct.
- F. **Link to It.** Providing a link to a copyrighted work is not making a copy of that work, and therefore outside the bounds of copyright law. It is generally acceptable to point others to material posted on the Internet by providing a link to the website.

## **IX. LIBRARY CONSIDERATIONS**

### **A. General Exemption**

1. Under copyright laws, University Libraries may reproduce copyrighted works provided that the reproduction will not be used for any purpose other than private study, scholarship, or research. The copy of such work shall become the property of the Library.
2. Libraries may copy a published work for the purpose of replacing a copy that is damaged, deteriorating, lost, stolen, or if the existing format in which the work is stored has become obsolete.
3. Libraries may provide unsupervised reproducing equipment without subjecting the library or its employees to copyright infringement.
4. The Libraries may participate in interlibrary loan arrangements as long as “aggregate quantities” of articles or items received do not substitute for a periodical subscription or purchase of a work.

### **B. Course Reserves**

1. The University Libraries support instruction with course reserves and other collection access services. The primary function of these services is to assure that students and teachers will have timely access to course-related library resources.

2. The Libraries may retain the right to refuse materials for reserve, or remove materials already on reserve, on the basis of law-related or administrative concerns.
3. The Libraries have permission from the Copyright Clearance Center (CCC) to use a wide number of materials for a fee. Please check with your librarian for specific procedures for using course reserves.

## **X. OBTAINING PERMISSION TO USE COPYRIGHTED MATERIAL**

### **A. Generally**

1. If an exemption (such as Fair Use, Face-to-Face teaching, or TEACH Act) is not clearly available, permission to use a copyrighted work must be obtained from the owner of the copyright holder. A request to use copyright material usually can be sent to the permission department of the publisher of the work. Assume four to six weeks for a request to be processed.
2. A standard permission request is attached – **[Permission Request Form](#)**
3. Written evidence of permission must be obtained. Such evidence should be kept by the academic department.

### **B. Journal Articles**

The University Libraries may have certain rights under the Copyright Law to make copies from many journals. Before forwarding a request for an article to a journal's publisher, check with the appropriate library to see if your intended use is permissible.

### **C. Copyright Clearance Center (CCC)**

The CCC is able to give permission to use a wide number of materials for a fee. Please consult with the University Library or contact the CCC at [www.copyright.com](http://www.copyright.com) for more information.

## **XI. ADDITIONAL RESOURCES ON COPYRIGHT AND FAIR USE**

- **Guidelines for Classroom Copying.** These guidelines were prepared by the Authors League of America and the Association of American Publishers.  
[http://www.publishers.org/main/Conferences/Conf\\_Pub/conf\\_Pub\\_01\\_03.htm](http://www.publishers.org/main/Conferences/Conf_Pub/conf_Pub_01_03.htm)

- **Guidelines for Educational Multimedia.** These guidelines were prepared by the Consortium of College and University Multimedia Centers.  
<http://ccumc.org/node/210>
- **USF Office of the General Counsel.** If you have any questions or would like advice on specific aspects of copyright law as it relates to your area of responsibility, please contact:

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