INTRODUCTION

The Cummings Graduate Institute for Behavioral Health Studies (the “Institute”) is dedicated to providing quality education programs and services to its students through the formation, discovery, and distribution of knowledge. The Institute recognizes that the copyright holder has an exclusive right to his copyrighted works, but that use of copyrighted materials is sometimes necessary to enrich the teaching, research, and scholarship activities of its faculty and staff.

All employees of the Institute are expected to have a basic understanding of copyright law and to adhere to all laws regarding copyright, fair use, the Digital Millennium Copyright Act, and the TEACH Act, and to act in good faith when using copyrighted materials to support educational and research activities. The faculty, staff, and other Institute employees, the students of the Institute, and all members of the Institute’s community have an obligation to make informed and responsible decisions regarding their use of copyrighted materials and are obligated to comply with copyright law. Compliance with copyright law and the good faith exercise of fair use is the responsibility of each member of the Institute community.

OVERVIEW OF COPYRIGHT LAW

Copyright law, as defined in Title 17 of the United States Code, protects "original works of authorship fixed in a tangible medium of expression" for a limited period. Copyright protection includes, for instance, the legal right to publish and sell literary, artistic, or musical works, and copyright protects authors, publishers and producers, and the public. Copyright applies both to traditional media (books, DVDs, CDs, etc.) and to digital media (electronic journals, web sites, etc.). Copyright protects the following eight categories of works:

- literary works
- musical works
- dramatic works
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

Ownership of a copyrighted work includes the right to control the use of that work. Use of such work by others during the term of the copyright requires either permission from the author or reliance on the doctrine of fair use. Failure to do one or the other will expose the user to a claim of copyright infringement for which the law provides remedies, including payment of monetary damages to the copyright owner.

From Carol Funker at Southwestern University
WHAT IS FAIR USE?

According to the Code of Best Practices in Fair Use for Academic and Research Libraries, “fair use” is the right to use copyrighted material without permission or payment under some circumstances, especially when the cultural or social benefits of the use are predominant. Determining whether any use is likely to be considered “fair” requires a thoughtful evaluation of the facts and the law. There are four factors to be considered in determining whether or not a particular use is fair:

- The purpose and character of the use, including whether such use is of 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

The distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission. Simply because use is intended in an academic setting does not mean the usage falls under fair use. Fair use does not allow a work to be copied repeatedly, term after term, without permission. Fair use applies to all copyrighted works regardless of the media in which they are fixed: print, electronic, or multimedia.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Institute, its Library, or any employee of the Institute cannot give this permission. When it is not feasible to obtain permission, use of copyrighted material should be avoided unless the doctrine of free use would clearly apply to the situation.

From Section 107 of the Copyright Act (Title 17 of the United States Code)

WORKS IN THE PUBLIC DOMAIN

A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. Works fall into the public domain for three primary reasons:

- The term of copyright for the work has expired,
- The author has failed to satisfy statutory formalities to perfect the copyright, or
- The work is a work of the US Government.

As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first. Permission is not needed to use works in the public domain.

From Chapter 3 of the Copyright Act (Title 17 of the United States Code)
DIGITAL MILLENNIUM COPYRIGHT ACT

The Digital Millennium Copyright Act (DMCA), enacted in October 1998, amended the Copyright Act by adding specific provisions relating to digital content. The DMCA enforces laws to prevent the circumvention of software or other technological locks that give copyright holders the right to control access, print, download, copy, or further distribute their digital works. Under DMCA it is a civil and criminal offense for anyone to circumvent anti-piracy measures in software, to disseminate software or other copyrighted digital material without permission. Fair use is not a defense to the criminal act of unauthorized circumvention.

Distributing copyrighted materials over the Internet for which the faculty or staff member does not have permission is a violation of the DMCA.

As an educational institution, the Institute will limit its liability as follows:

- Take measures to protect against unauthorized access,
- Devise a reasonable way to limit unauthorized dissemination after access has been acquired,
- Only acquire lawfully-produced copies of copyrighted works for performance or display,
- Designate the Director of the Cummings Graduate Institute for Behavioral Health Studies as the Institute’s Compliance Agent to receive reports of copyright infringement, and
- Have a posted Copyright Policy and educate faculty and staff about copyright, and comply with any “take down” requests on material that has been infringed.

The Institute shall abide by the provisions of DMCA, which requires a prompt response to claims of copyright infringement by copyright holders or their agents. If a faculty or staff member willfully infringes while teaching, studying, or conducting research, the Institute will not be held liable and additional disciplinary action may occur.

TECHNOLOGY, EDUCATION, AND COPYRIGHT HARMONIZATION ACT

The Technology, Education, and Copyright Harmonization (TEACH) Act was enacted in November 2002 as an amendment to the Copyright Act of 1976. Found in section 110(2) of the Act, it covers distance education as well as face-to-face teaching which has an online, hybrid, or broadcast component.

Since many of the TEACH Act provisions concern requirements that the Institute is still working on, faculty and staff should rely on other methods for use of copyrighted materials in online courses (i.e. permissions, course packs, fair use) until the Institute is able to meet the requirements of the TEACH Act. At that time, this document will be updated with detailed information about the TEACH Act.

Those interested in the requirements in the TEACH Act are encouraged to consult http://www.copyright.gov/docs/regstat031301.html
Copyright law protects almost all content on the Web or in any other digital or electronic form regardless of a copyright notice. Therefore, permission is most likely required to use that work beyond fair use. The course instructor is responsible for ensuring that all materials posted online (in course shells, as individual documents, or via e-coursepacks) have appropriate permissions.

A learning management system (LMS) like Brightspace often replaces the use of coursepacks, classroom handouts, and library reserves. When it comes to copyright, there is no difference between digital and paper-based environments. Traditional copyright rules will still apply. If permission is needed to use an item in print format, it most certainly is needed to use the content in an electronic format, such as the content available to multiple students via the LMS. Posting materials online in a course shell requires copyright permission from the copyright holder or its agent. If a faculty member needs to use an article for a class or for any other use, copyright permission is required.

PERMISSIBLE USES OF MATERIAL IN THE ONLINE CLASSROOM

Instructional materials may be posted to online classrooms within the learning management system (LMS) or course website under any of the following circumstances:

- The instructor is the copyright owner of the material, or
- The material is made available by linking rather than posting full-text copies, or
- The copyright owner of the material grants permission, or
- The material is in the public domain, or
- The use is within "fair use" under the law, or
- The use is within another statutory exemption.

Ownership of Copyrighted Material: Of course, professors may post materials to which they hold the legal rights. In general, a person is the copyright owner of scholarly and instructional materials created independently, unless the copyright has been assigned to another party. Faculty authors of journal articles and other materials frequently assign their copyrights to publishers under the terms of a publication agreement, so these contracts should be read carefully to determine who actually owns the copyright to a work.

Linking to Databases and the Web: The easiest and most lawful way to post materials is by simply linking to them within the CORE Library holdings. This is the preferred method of posting materials to course shells, and it is permissible as the Institute has licensed the content. For more information on how to use permanent links to connect from a course shell to the CORE library, please visit [http://azhin.org/cummings/faculty/permalinks](http://azhin.org/cummings/faculty/permalinks).
Many journal publishers offer open access to journal articles on their websites after a designated amount of time has passed. Linking to a free Internet source at its original URL does not violate copyright. Many works are available on the Internet with a statement of permitted use or with a Creative Commons license.

**Fair Use:** There are no hard-and-fast rules for permissible fair use except the four tests mentioned in the Fair Use Doctrine. Feel free to consult with the CORE Librarian for more advice on this subject. However, generally speaking, you may use small portions of an article or work (for example, as part of a PowerPoint lecture). Please be certain to acknowledge the source as you use the information and to include a complete citation in the “References” so that students may pursue the entire article on their own.

Examples of how to do this, scenarios, and other helpful information on what can and should not be used can be found under the Faculty tab at the CORE Library website (http://azhin.org/cummings.)

**Permission to Post Materials:** If a desired article is not part of the CORE library, the Institute can help faculty members to obtain permission for faculty to use most all magazine, newspaper, or journal articles.

Permission must be obtained for each semester. If a faculty member needs an article, he should contact the CORE Librarian with as much information as possible, including the publication title, article title, date, author, page numbers and ISBN or DOI. To obtain clearance, the CORE Librarian will also need to know the specific use (use with a course management system, etc), the length of time that the professor wishes to use the materials (number of semesters), and the number of students expected to have access to the work.

Lastly, professors must inform the Librarian which of the following circumstances would apply:

- The faculty member needs both copyright clearance and an electronic copy of the requested text, or
- The faculty member needs only copyright clearance as he already has an electronic copy of the requested item.

Faculty members may conveniently request these items via email to the Librarian or by using a Clearance Permission Request available under the Faculty tab at the CORE Library website (http://azhin.org/cummings).

_From the Copyright Advisory Office at Columbia University_
ADDITIONAL RESPONSIBILITIES

In addition to ensuring that all materials posted to a course shell comply with copyright law, each professor must provide a notice to students that materials used in connection with the course may be subject to copyright protection and that students should not make unauthorized copies of course materials.

Shown below is the notice that should be prominently posted in course shells and on course materials:

The materials on this course web site are copyrighted. All rights are reserved. The materials are only for the use of faculty and students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. Refer to the Cummings Graduate Institute for Behavioral Health Studies’ copyright policy for more information.

The following steps should be taken, in order, to obtain and post content that complies with copyright law.

1) CORE LIBRARY LINK FIRST: Embedding permanent links to articles within online course materials is a permissible way of using articles in course shells. This is because the Institute’s agreement with database vendors grants permission to link to these articles within the CORE library holdings to the Institute’s learning management system (Brightspace).

Downloading copies of full-text articles and loading them to course shells as PDFs is a violation of the Institute’s user agreement with database vendors and is not a permissible use of copyrighted material.

For more information on how to locate permanent links within full-text articles and how to embed them into course shells, please visit the Faculty tab at the CORE Library website (http://azhin.org/cummings).

2) LOOK FOR OPEN ACCESS. Many journal publishers offer open access to journal articles on their websites after a designated amount of time has passed. Linking to a free Internet source at its original URL does not violate copyright. Many works are available on the Internet with a statement of permitted use or with a Creative Commons license.

Items posted on the internet that are clearly in violation of copyright law should not be used or linked to. Online content is still subject to copyright law.

3) OBTAIN PERMISSION: If a desired article is not part of the CORE library, the Institute can help faculty members to obtain permission for faculty to use most all magazine, newspaper, or journal articles.

Permission must be obtained for each semester. If a faculty member needs an article, he should contact the CORE Librarian with as much information as possible, including the publication title, article title, date, author, page numbers and ISBN/DOI. To obtain clearance, the CORE Librarian will also need to know the specific use (use with a course management system, etc), the length of
time that the professor wishes to use the materials (number of semesters), and the number of students expected to have access to the work.

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**DISCLAIMER**

This Guide, while meant to be informative, is not comprehensive. Nor is the CORE Library or its librarian(s) copyright experts. The Institute does not employ a “copyright librarian” nor does it have a Copyright Clearance department. If faculty members still have questions concerning the appropriate use of any materials or whether something is copyright protected, it is best to err on the safe side and request the appropriate permissions.

**REFERENCES**


