Garrett College Copyright Policy

Introduction:

Copyright is a constitutionally conceived property right which is designed “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries” (U.S. Constitution, Article I, Section 8). The Copyright statute, 17 U.S.C. §§101 et seq., implements this policy by balancing the author’s interest against the public interest in the dissemination of information. The purpose of this law is to foster the creation and dissemination of intellectual works for the general public.

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included within the Copyright Act is the “fair use” doctrine which allows, under certain conditions, the copying of copyrighted material. The law states:

17 U.S.C. §§107. Limitations on exclusive rights: Fair use Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include –

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

The purpose of this policy is to help advise the Garrett College community of copyright compliance issues and their rights and responsibilities under the copyright law. The policy outlined in this document is intended to insure that institutional practices at Garrett College conform to the U.S. Federal Copyright Law (Title 17 U.S. Code) including amendments and the TEACH Act.

Faculty members at Garrett College often find it necessary to make available to their students copyrighted material other than classroom text books to increase the effectiveness and relevance of their teaching. The Copyright Act of 1976, 17 U. S. C. sect. 1 et seq. (effective January 1, 1978), provides for duplication of copyrighted materials of others where the copying is considered a “fair use” of the material.

Garrett College supports the following copyright policy statement in order to facilitate lawful copying by College faculty and staff, within the parameters of the Copyright Act, while carrying out their educational, research, creative and scholarly endeavors.
Policy Statement:

It is the policy of Garrett College that all members of the College community must comply with U.S. Copyright Law. The exclusive rights of a copyright owner shall not be willingly or knowingly infringed by the College or any members of the College community while employed by Garrett College. The rights of educators and students in fair use of copyrighted materials shall be conducted through a reasoned application of the copyright law. Responsibility for the use of copyrighted material and liability for any instances of copyright infringement lies solely with the user and not with the College or any of its employees or representatives. The College will make concerted efforts to educate the College Community of their responsibilities related to copyright compliance.

Fair Use Doctrine:

Faculty and staff are permitted to use and duplicate copyrighted materials of other parties for educational and classroom uses provided such activities are within the fair use standard, a statutory provision[17 U. S. C. section 107] which provides that certain uses of a copyrighted work that might otherwise be in violation of the copyright provisions, are not an infringement. The fair use standard requires evaluation by College faculty, and other members of the College community, of the following factors to determine if duplication or use by a third party qualifies as fair use:

- **The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes.**
  
  Non-profit educational uses, such as duplication for classroom purposes rather than commercial uses, and without a charge to the user, tend to support a finding of fair use.

- **Nature of the copyrighted work.**
  
  Published factual works, such as reference works, scientific articles, encyclopedias, or other factual works, by their nature more readily support a finding of fair use than do unpublished works or non-factual, fictional, or creative works, such as musical compositions, novels and films.

- **Amount and substantiality of the portion used in relation to the copyrighted work as a whole.**
  
  If the portion of the work copied or used in relation to the entire work is quantitatively and qualitatively insignificant, it is more inclined to favor fair use. Copying of a portion of a work may be found to be other than a fair use if the portion constitutes the essence or critical part of the copied or used work.

- **The effect of the use upon the potential market for or value of the copyrighted work.**
  
  Use of a copyrighted work that is not detrimental to and does not diminish the potential market for the work or cause economic harm to the owner of the work, will favor a finding of fair use.
Faculty, and other members of the Garrett College Community, are expected to request permissions in writing from the copyright holder when, after evaluating the copyrighted material for all four fair use standards, the material falls within excess of legal limitations and is a questionable fair use exemption. Publishers generally have established copyright clearance offices and standard practices to allow for educational uses. Sample permission request forms are available at the Garrett College Library.

Prohibitions:
The following activities generally will not, per se, constitute fair use and should not be engaged in by College faculty, or other members of the College community, without consultation and permission from the copyright owner:

- Duplication of materials for profit.
- Duplication of material from published textbooks.
- Duplication of unpublished materials.
- Duplication of the same materials for classroom use term after term.
- Copying to create, replace or substitute for anthologies, compilations or creative works.
- Copying of or from workbooks, exercises, standardized tests, answer sheets or other consumable works in the course of teaching.
- Copying without including the copyright notice appearing on printed copy.
- Charging a student beyond actual copying cost.
- Duplication of computer software for multiple uses.
- Changing the format of a recorded work if circumvention of technological restrictions on the original work is necessary to make a new copy, or if an existing license prohibits such activity, or if the desired alternate format for the work is legally available for purchase.

Fair Use Guidelines:
Fair use analysis can sometimes be difficult to determine, therefore, organizations representing educational institutions, authors and publishers developed an Agreement On Guidelines For Classroom Copying In Not-For-Profit Educational Institutions With Respect To Books And Periodicals; representatives of music publishers and music teachers developed Guidelines For The Educational Uses Of Music; and representatives of educational institutions, copyright proprietor and creative guilds developed Guidelines For Off-Air Recording of Broadcast Programming For Educational Purposes. These three guidelines provide a source for consideration with regard to fair use, in that any copying or use within these guidelines probably would favor a determination of fair use.

It is important to note that guidelines are not included in the copyright law and therefore do not have the force or effect of law. A reasoned and careful analysis of the four factors for fair use should still the primary analysis for consideration of fair use. A copy of Fair Use Guidelines is available from the Library Director at Garrett College.
Contact:
For answers to questions concerning copyright and fair use, contact the **Library Director at 301-387-3003 (or e-mail Robert.Kerns@garrettcollege.edu)** Questions regarding software licensing should be referred to the **Help Desk at 301-387-3027 (or e-mail helpdesk@garrettcollege.edu)**

This policy was derived from information contained in the following publications:


**Appendix A: Online Copyright Resources**

Your government resource for accessing the copyright laws and finding helpful information and answers for questions related to compliance.

**Copyright Clearance Center**
[http://www.copyright.com/ccc/home.do](http://www.copyright.com/ccc/home.do)
“From course management systems to e-reserves, technology is changing the way faculty, staff and students share information. CCC's permissions and educational resources support all the ways your campus uses content in print, online and in the classroom.” (CCC Homepage)

**Campus Copyright Rights and Responsibilities: A Basic Guide to Policy Considerations**
[http://aaupnet.org/aboutup/issues/Campus_Copyright.pdf](http://aaupnet.org/aboutup/issues/Campus_Copyright.pdf)

**Stanford University Libraries**
This site at Stanford is intended to assist educators seeking permission to use copyrighted works for academic purposes. It provides information about assembling academic coursepacks and discusses issues that arise when using copyrighted material in the classroom. The chapter linked includes form agreements to review as a sample for obtaining clearances for coursepacks, and outlines some established and proposed educational fair use guidelines.
[http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/)
Appendix B: Examples of Fair Use Practice

Each of the examples below is intended to be illustrative only. A detailed analysis and checklist of the four factors for fair use should always be conducted prior to making a determination. When in doubt, professional consultation is recommended. In all instances, materials copied for classroom purposes must include a notice of copyright.

Example 1
The Co-curricular Committee wants to show a movie for entertainment on a bus trip to the Smithsonian.

This is a copyright infringement because it is not for an educational purpose, but for entertainment and does not fall into the principles of fair use. Performance rights would need to be obtained from the copyright holder.

Example 2
The International Club wants to show a foreign film rented from the video store to the public to raise funds for their club.

This film cannot be shown even if the Club does not charge the public. A public viewing does not fall into the category of fair use. This viewing would be for entertainment, rather than educational purposes, and sponsors must get permission from the copyright holder or pay for public viewing rights.

Example 3
A faculty member has found material out of copyright and/or in the public domain (e.g., U.S. Government Publications).

There are no limitations on copying for classroom use materials in the public domain.

Example 4
A faculty member finds a copyrighted article in a journal which is highly relevant to a class she will be teaching soon. There is no time to contact the publisher and obtain permission to make copies for her class.

The faculty member may, on a one-time basis, make these copies. The decision to use the copyrighted work is "spontaneous" and allowed. However, continued use in other semesters would not fall within the fair use principle.
Example 5
In planning for the course for a term, a faculty member has gathered a variety of articles, from various journals and three book chapters, which are to be assigned as supplementary reading to a class.

The faculty member may place a copy of the materials on reserve in the library and ask that classes read them during the term. If students make copies of the materials, such copying must be limited by fair use standards. The faculty member may not, without the publisher’s permission, ask copy center staff to make multiple copies (anthologies or coursepacks) of the materials for students, even on a cost recovery basis only, without permissions or a careful analysis of the fair use factors for each item included in the anthology or coursepack.

Example 6
A faculty member finds a very short story that would complement a lesson being taught and wants to make multiple copies for class.

This can be done as it was the inspiration of the teacher and meets the criteria of brevity; however, the copies cannot be used next term without permission.

Example 7
A faculty member wonders if he/she may copy a chapter from a book that is marked: “All rights reserved. No parts of this book maybe reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing form the publisher.”

This may be copied if it is for educational purposes and meets the fair use criteria.

Example 8
The audiovisual department is asked to tape a movie off-air and use it in the classroom.

This is permissible if the instructor requests the copy be made, a notice of copyright is included, it is shown to students promptly, it is then subsequently erased, and it is used for instructional, not entertainment purposes. The same is true for a movie taped at home and shown in class.

Example 9
An instructor wants to show a video/DVD in class that was rented at the video store.

This would fall into the category for fair use as long as it is for instructional purposes and not entertainment. The face to face teaching exemption (Section 110) is an exception to the “home use” only message on the video or DVD.
Example 10
An instructor wants to copy clips of various video/DVD clips to make one compilation video to show in the classroom for educational purposes.

This would lean toward fair use as the purpose is for education and not for profit, the amount being used is small, discrete portions, and there is no negative effect on the market and if lawfully acquired copies of the clips are being used.

Example 11
The music instructor wants the tape a Spring Concert program; transfer the tape to CD and give copies to interested students and parents.

When any copyrighted song is recorded and distributed, regardless of the purpose or non-profit status, the distributors/producers of the recording must apply for a compulsory mechanical license (licensing of copyrighted musical compositions for use on CDs, records, tapes, and certain digital configurations) for each work.

Example 12
A faculty member has purchased a software program which is useful for doing a few class exercises. It is licensed for use on one machine.

The faculty member may put a single copy on reserve for specified use in doing the exercises. The faculty member may not concurrently use the original copy, nor may students copy it for use on their own computers. Students should not only be warned that the software is copyrighted material, but also that copying it is in violation of the law. Faculty members should always refer to the license agreement included with software packages.

Example 13
An instructor is making a multimedia presentation and wants to use several popular songs as background.

Using portions of songs (less than a performable unit) is allowed; however using an entire song is not.

Example 14
An instructor wants students to create a multimedia project or a Web site for class purposes. Many of the students want to copy graphics from the Internet and possibly other copyrighted materials for the project.

The instructor will need to work with the student to determine the purpose of the use, the nature of the various materials, the amount used, and the effect on the market, in other words, the four factors for determining fair use apply to student projects, also. In general, this can be considered fair use if a student is creating a Web site or multimedia project as part of a course requirement and the final product is not made publicly accessible.
Example 15

In a distance education classroom an instructor is transmitting digital materials to students and wants to use some copyrighted materials.

The instructor should follow the requirements of the TEACH Act amendment passed in 2002. This means that:

- All materials used for display and performance in the digital classroom must be works that were lawfully made and acquired.
- The use of the copyrighted resources must be within the confines of “mediated instructional activities” – integral to the course, under the direction of the course instructor and analogous to the kinds of performances or displays used in the physical classroom.
- The use of dramatic literary works is limited to smaller, discrete portions of the work unless performing or displaying the work is essential to the course.
- The digital transmission is made for enrolled students only and to the extent technologically feasible, limited to enrolled students.
- The instructor should label the works as protected by copyright and include the notice of copyright whenever possible.

The examples used in this appendix were derived from suggestions and recommendations of the American Library Association publication—Complete Copyright: An Everyday Guide for Librarians by Carrie Russell Creative Commons Deed License 2004.