

Policy: Copyright Policy	Policy No: II-1
Policy Owner(s): Provost / Human Resources	Original Date: 2/14/16
Last Revised Date: 3/4/2016	Approved Date: 4/23/2016

- I. **POLICY:** All members of the John Carroll University (JCU) community are expected to adhere to copyright laws and act in good faith in the fair use of copyrighted material, including federal copyright laws relevant to the academic use of copyrighted materials.
- II. **PURPOSE:** To set out the University copyright policy and expectations for compliance with copyright laws, and to provide guidelines to aid in compliance with the copyright policy and the law.
- III. **SCOPE:** All employees of John Carroll University
- IV. **PROCEDURES:**
 - A. **Copyright Compliance:** John Carroll University employees engage in original research which is protected under the U.S. federal copyright law. Original works created by individuals not affiliated with the University also are protected under copyright law. All members of the JCU community are expected to adhere to copyright laws and act in good faith in the fair use of copyrighted material, including federal copyright laws relevant to the academic use of copyrighted materials.
 - B. **Infringement by Users: Notice and Take Down of Infringing Content:** Consistent with requirements of applicable law, the University must provide notice and take certain steps to address users of the University’s computer and on-line services who are infringing on the copyright rights of others.
 - 1. Upon receipt of proper notification of a claimed infringement of copyright, the University will act expeditiously to remove the material or disable access to the infringing material.
 - 2. When notified by a copyright owner of infringing materials on a computer attached to the University network, the University must take immediate action to block network access to the computer and notify the owner of the computer. Network access will be restored after the infringing material is removed from the computer or within 14 days after receiving a proper counter-notification, unless the copyright owner files an action seeking a

court order against the computer owner. JCU may be served with a subpoena for the identity of the owner of a computer determined to contain infringing materials. John Carroll University will comply with any such valid subpoena.

3. The University also complies with the law by registering a designated agent with the U.S. Copyright Office. JCU's Agent is:

Chief Information Officer
1 John Carroll Blvd., University Heights, OH 44118
Phone: (216) 397-1750
Fax: (216) 397-1734

- C. **Consequences of Copyright Violations**: Copyright infringement may have serious consequences for the University, as well as personal liability for an individual engaging in infringement. When permission to use copyrighted material is required, that permission is to be obtained prior to use of the copyrighted material. Any individual who knowingly violates copyright laws assumes liability for such actions. The University does not assume liability for, and is not obligated to defend, individuals who knowingly fail to comply with copyright law, or any licenses for access to and use of others' copyrighted works.
- D. **Requesting Copyright Violation by Others**: No member of the University community should ask someone else to violate copyright law. If asked to violate copyright law, the individual can refuse without fear of retaliation.
- E. **Enforcement**: The University may take appropriate remedial action and/or appropriate disciplinary action consistent with existing University policies. JCU also may terminate the network account of repeat infringers according to the provisions of copyright law.
- F. **Resources**:
 1. The attached Copyright Guidelines provide a reference for use of copyrighted materials and a summary of various aspects of copyright law.
 2. The JCU Grasselli Library provides information and preliminary consultation on the use of copyrighted materials.
 3. The Office of Legal Affairs advises on specific legal matters involving copyright or directs University members or organizations to appropriate legal guidance.

VI. ATTACHMENTS:

- A. Attachment 1: Copyright Guidelines
- B. Appendix A: Digital Millennium Copyright Act of 1998 (DMCA)
- C. Appendix B: 2002 Teach Act Requirements
- D. Appendix C: Creative Commons Licensing
- E. Appendix D: Checklist for Fair Use

ATTACHMENT 1: COPYRIGHT GUIDELINES

I. INTRODUCTION

These copyright guidelines are intended to ensure that all members of the JCU community have easy access to information on how copyright laws guide the community's ability to use documents that fall under copyright law protections.

The following guidelines cover various aspects of copyright law that may be relevant to members of the JCU community. These guidelines are designed to be a reference and provide a summary of the various aspects of copyright law applicable in a higher education setting. Additional resources are contained in the Appendix. Please see Reproduction of Copyrighted Works by Educators and Librarians (<http://www.copyright.gov/circs/circ21.pdf>) from the United States Copyright Office for more information.

II. LAWS GOVERNING COPYRIGHT

The following laws govern copyright in the United States and form the basis for the JCU Copyright Compliance Policy and Guidelines.

A. 1976 COPYRIGHT ACT (<http://www.copyright.gov/title17/>)

U.S. copyright law was conceived by the framers of the U.S. Constitution (art. I, sec. 8, cl. 8) as a way to protect and promote innovation for a short and fixed period of time. Copyright law is codified as The Copyright Act, Title 17, United States Code. The current version was signed into law by President Gerald Ford in 1976. Copyright law protects the rights and interests of creators of intellectual property, but also recognizes the needs for researchers and educators to use others' copyrighted works.

B. DIGITAL MILLENIUM COPYRIGHT ACT (DMCA) (see Appendix A). http://www.copyright.gov/reports/studies/dmca/dmca_executive.html

On October 28, 1998, the Digital Millennium Copyright Act (DMCA) was signed into law. This Act was the first to address new developments presented by digital technology, and included anti-circumvention provisions and "safe harbors" for online service providers that comply with notice-and-take down requirements.

C. 2002 TEACH ACT (see Appendix B)

On November 2, 2002, the Technology, Education and Copyright Harmonization Act (the TEACH Act), part of the larger Justice Reauthorization Legislation, was signed into law. TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the United States may use copyright protected materials in distance education – including on websites and by other digital means – without permission from the copyright owner and without payment of royalties.

In order to enjoy its advantages, universities and other qualified educational institutions need to meet the law's rigorous requirements. The law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.

D. CHAFEE AMENDMENT, 17 U.S.C. §1201.

The Chafee Amendment, passed in 1996, permits an “authorized entity” to “reproduce or distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats *exclusively* for use by blind or other persons with disabilities.”

While interpretation of this law is still developing, educational institutions may qualify as “authorized entities” under the Chafee Amendment, and the doctrine of fair use may allow university libraries to provide full digital access to copyrighted works to their print-disabled patrons to make appropriate accommodations for the blind and print disabled.

III. COPYRIGHT CRITERIA AND OWNERSHIP

For a work to be protected under copyright, the law stipulates that it must be:

- 1) an original work of authorship

All works in all mediums *created* by an author fall under copyright protection

- 2) fixed in a tangible medium of expression by or under the authority of the creator

This includes articles, speech notes written on the back of an envelope, web pages, books, music, software, CDs, art works, other audio-visual works, choreography, etc.

Any work that meets the above two criteria falls under copyright law, and the coverage is both immediate and automatic. The creator of the original work is the *copyright owner*. Copyright protection does **not** require any form of copyright notice or registration with the U.S. Copyright Office, although registering and affixing a notice is an option used by copyright owners to inform others that the a work is copyright protected (often this is a © or the abbreviation Copr.).

IV. COPYRIGHT EXCLUSIVE RIGHTS

A. Rights

Copyright owners hold a number of exclusive rights that others may not exercise unless legal exemptions apply (see Sections VI – IX below). Commonly referred to as a bundle of rights, all copyrights can be retained by the creator or ‘unbundled’ individually. Copyright can be transferred to another party (i.e. a publisher) with the signing of a legal document. The copyright owner has **exclusive** rights to:

1. *Reproduce or Copy a Work:*
 - a “copy” is any fixed “form where it can be perceived, reproduced, or communicated, either directly or with the aid of a machine.” 17 U.S.C. § 101.
2. *Create Derivative (Adaptive) Works:*
 - “derivative” is a work based on a previous work, with addition of new, original content, such as a new musical from a play or a new movie from a book.
3. *Distribute the Work:*
 - publish, download, upload, increase access to, transmit electronically

4. *Perform the Work Publicly:*
 - recite, render, play, act, dance, “with or without the aid of a machine” so that the work can be seen or heard (including audio performances). 17 U.S.C. § 101.
5. *Display the Work Publicly:*
 - display to an audience a work licensed only for private viewing.
6. *Perform Source Recordings Publicly by Means of Digital Audio Transmission.* 17 U.S.C. § 106(6).

B. Permissible Use and Exemptions

JCU faculty, staff, and students may wish to copy articles for a class, use graphics or images, or show parts of a movie for instruction. In some instances, copyright law permits such uses without seeking owners’ permissions; in other instances, such uses are prohibited. Absent a pertinent exemption described in sections VI through IX of these guidelines, JCU faculty, staff and students should seek permission from the copyright holder to use the copyrighted work. Unauthorized use of copyrighted materials violates the rights of a copyright holder, even if unintentional.

V. PUBLIC DOMAIN & THE TERM LIMITS OF COPYRIGHT PROTECTION

Works that fall under the public domain exception are *not subject to copyright law*. These include:

1. U.S. government employee works: Any work written by a U.S. employee falls under the public domain exception. These works may be used by anyone although it is appropriate to attribute the source. This exemption does not apply to state or local governments or their employees, which retain copyright.
2. Works created before 1923: Any work created before 1923 falls under the public domain exception.
3. Works available through the Creative Commons License: Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools. See Appendix 3 for Creative Commons Attribution.
4. Works created by an author but after a period of time copyright has lapsed: A work by an author(s) is protected for a term based upon the life of the authors. Anonymous and pseudonymous works and works made for hire are protected for a specific term of years. Once these terms have expired, or the copyright holders have relinquished their rights, the works pass into the public domain exception. See Cornell University chart on copyright termination located at <https://copyright.cornell.edu/resources/publicdomain.cfm>. Use of the chart is governed by the Creative Commons Attribution License.

VI. FAIR USE

Fair Use, codified under 17 U.S.C. §107, allows copyright materials to be used in classroom instruction, without infringement of copyright law, if the following four factors are considered:

Factor 1: the purpose and character of the use, including whether such use is a commercial nature or is for nonprofit educational purposes

Factor 2: the nature of the copyrighted work

Factor 3: Amount and Substantiality of the portion used in relation to the copyrighted work as a whole

Factor 4: Effect of the use upon the potential market for or value of the copyrighted work.

It is important to note that each case is viewed individually, and all factors must be balanced. Factor 1 favors the use of materials in an educational setting. However, institutions of higher learning must demonstrate how each factor weighs in an individual's decision to use copyrighted materials. The best protection an individual has in following copyright law is to document application of each of the four principles in the fair use guidelines and how it relates to your use of the materials.

VII. PHOTOCOPYING PRINT MATERIALS ALLOWED FOR CLASSROOM USE

The following guidelines on photocopying were developed by the Ad Hoc Committee of Education Institutions on Copyright Law Revision, the Authors League of America and the Association of American Publishers, and were printed in the House Judiciary Committee Report.

- A. One copy may be made for each student in the course for classroom use or discussion. The copy made must become the property of the student and students may not be assessed any fee beyond what is incurred to make the copies. Other guidelines include:
1. The copying adheres to the brevity standard of the law and is spontaneous
 - Poetry: A complete poem if less than 250 words if printed on not more than 2 pages OR an excerpt of not more than 250 words. This may be expanded to finish a line.*
 - Prose: Complete story, article or essay if less than 250 words; OR an excerpt that is a minimum of 500 words and not more than 1,000 words or no more than 10% of the total piece, whichever is the lesser amount. This may be expanded to finish a paragraph.*
 - Illustration: One chart, picture, diagram, cartoon, drawing or picture per book or per periodical issue*
 - "Special Works" A maximum of 2 pages or no more than 10% of a special work which combines illustrations and text and is no more than 2,500 words.*
 - The copying is a spontaneous decision by the professor and is so close to the*

teaching moment that it is unreasonable to expect that permission may be sought prior to the class period

- The copying is done for one course and is not repeated from semester to semester*

2. The copying meets the cumulative effect test

- Only one short poem, article, essay or story may be copied from the same author, and only 1-3 from the same collective work or periodical issue during one semester*
- No more than 9 instances of copying may be done for any one course during a semester*
- Copying is never allowed under law for a “consumable” work, e.g., from a lab manual, exercise book, standardized tests and answer sheets.*
- Copying may not be used to replace the purchase of a book or text by students*

3. Each copy made contains a copyright notice

- B. Under section 106 of the Copyright Law, one copy may be made and put on library reserves for students. All materials on library reserve must be owned by Grasselli Library or the faculty member putting the material on reserve.
- C. Materials copied in excess of the law noted above may still be used provided the faculty member obtains appropriate permission from the copyright holder or fees to the copyright holder are paid.

VIII. THE USE OF MEDIA ON CAMPUS

The use of media for distance education falls under the Digital Millennium Copyright Act (DMCA) of 1998. (see Appendix A of these guidelines). Current copyright law and DMCA allow the following:

A. Films/DVDs/VHS

- Films/DVDs/VHS tapes may be shown in a classroom setting to the students enrolled in the course.
- Films/DVDs/VHS tapes may be placed on library reserve for students to view in the Library.
- Films digitized to be embedded into a Canvas course page must either 1) be streamed from a vendor who has paid for educational licensing rights; **or** 2) the University must have paid a license fee to embed the video into Canvas; **or** 3) The University must have received copyright permission to digitize and stream the complete film/DVD/VHS via embedding into Canvas; **or** 4) up to 10% of the film/DVD/VHS may be embedded into Canvas without first paying a licensing or streaming fee.
- All films/DVDs/VHS digitized versions of a movie must be removed from the Canvas

page at the end of the semester.

- The law expressly prohibits the presentation of an unlawfully made copy of a film.

B. Music

- An entire recording may be presented in a face-to-face teaching situation. In other instances, only a portion of the musical piece may be used in an online course or linked to a Canvas course account.
- Copyright law protects live and recorded (analog and digital) audio performances and the rights to perform and/or record copyrighted works. Use of these works may require permission from the copyright holder, which may be the composer, performer, or an association such as the American Society of Composers, Authors and Publishers (ASCAP). A statement of copyright and attribution of the source must be included with each use.
- It is prohibited under current law to use campus resources to share or distribute audio material to others without first receiving copyright permission.
- Copying or digitizing recordings is prohibited except when replacement copies cannot be obtained at a fair market price.

C. Images (Analog and Digital)

- No more than 5 images from one artist or photographer
- No more than 10% or 15 images, whichever is less, from a collection

D. Broadcast Programs

Broadcast programs (radio, television, Webcast) are subject to the following guidelines:

- Most broadcast programs may be kept for up to 45 days and then erased.
- Recorded broadcasts may be used no more than twice within the first 10 days of the retention period. The second broadcast may only be used, as necessary, to reinforce the instruction.
- After the initial 10 days following the broadcast, the broadcast may only be viewed/listened to by the instructor for evaluation to determine if it should be added to the curriculum.
- All copies of the broadcast recording must include the copyright notice as it was shown on the original.
- The broadcast recordings may not be physically or electronically altered, nor may they be added to other recordings to create an anthology.
- The time limitations, specified above, do not apply to hard news (local, regional or network broadcasts), interviews concerning these broadcasts, or on-the-spot coverage of news events.

- Broadcast recordings may only be added to the University collection once appropriate permissions have been received from the copyright holder.

- Premium pay services such as HBO, Netflix, Cinemax and Disney, and cable-only services such as ESPN, USA and MTV do not fall in the open broadcast category and cannot be taped.

E. Use of Materials on 'Canvas'

Item	Allowed	Not Allowed
Article from a library database	Direct linking to article allowed	Copying and pasting the article into Canvas
Article, book, book chapter, or DVD obtained through interlibrary loan or otherwise borrowed from another library	Permission must be obtained	Permission denied or not obtained
Scanned copyrighted image	Must be educational in nature; display in Canvas for one semester	Repeated use over multiple semesters
Scanned chapter from a book	5% of the total work if in-print; 10% of the total work if out-of-print; allowed for one semester	More than the allotted percentages or repeated use over multiple semesters
Scanned article from a journal, trade publication, or magazine	A single article for one semester	Multiple articles from the same publication or repeated use over multiple semesters

APPENDIX A

Digital Millennium Copyright Act 1998 (DMCA)

In 1998, the U.S. Congress passed into law the Digital Millennium Copyright Act (DMCA). Under Title II of the DMCA, John Carroll University (JCU) is considered an Online Service Provider (OSP) for its students, faculty and staff as it is “a provider of online services or network access, or the operator of facilities thereof.” 17 U.S.C. § 512(k)(1)(B). As such, it makes JCU potentially subject to contributory infringement penalties when its users infringe upon others’ copyrights. The requirements established under the DMCA for JCU to avoid liability for such penalties include:

1. registration of an agent with the U.S. Copyright Office;
2. development and posting of updated copyright policies;
3. adoption of "notice and takedown" procedures for alleged copyright infringing materials; and
4. accommodation and non-interference with standard technical measures utilized by copyright owners to identify and protect their works.

DMCA and Online Service Provider

JCU, as an OSP, is not liable for monetary relief or for injunctive relief for a user’s infringement of copyright, *provided* that the University does not have actual knowledge of infringement, receives no financial benefit from it and, upon receipt of proper notification of a claimed infringement, acts expeditiously to remove the material or disable access to the infringing material.

When notified by a copyright owner of infringing materials on a computer attached to the University network, the University must take immediate action to block network access to the computer and notify the owner of the computer. Network access will be restored after the infringing material is removed from the computer or within 14 days after receiving a proper counter-notification, unless the copyright owner files an action seeking a court order against the computer owner. Additionally, as an OSP, JCU may be served with a subpoena for the identity of the owner of a computer determined to contain infringing materials. John Carroll University will comply with any such subpoena.

The requirement to have policies in place in order to take advantage of safe harbor provisions protects the University. Increased awareness of copyright laws makes it less likely an individual can claim ignorance of copyright law. The University complies with the law by registering a designated agent with the U.S. Copyright Office. JCU’s Agent is:

Michael J. Bestul
Chief Information Officer
1 John Carroll Blvd., University Heights, OH 44118
Phone: (216) 397-1750
Fax: (216) 397-1734
Email: mbestul@jcu.edu

DMCA and Peer-to-Peer (P2P)

Probably the greatest cause of copyright infringements is the use of peer-to-peer (P2P) file sharing services, such as BitTorrent and Gnutella, for sharing music and movies. Although the use of P2P file sharing is not illegal, its use to share copyright-protected files is illegal. Generally, the P2P file sharing programs install the software and automatically share downloaded files with other Internet users. Copyright owners and their agents use automated methods to actively scan the Internet to detect computers that are illegally sharing copyrighted files.

APPENDIX B 2002 TEACH Act Requirements

The Technology, Education and Copyright Harmonization (TEACH) Act of 2002 requires that an institution meet the following requirements that allow the use of copyright materials in a digital environment, including distance education and course management systems such as Canvas.

The TEACH Act requires that the following terms of this checklist are met in order to use copyright materials in distance education:

- 1. The institution must be an accredited, non-profit educational institution
- 2. The use must be part of the mediated instructional activities
- 3. The use must be limited to a specific number of students enrolled in a specific class
- 4. The use must either be “live” or asynchronous
- 5. The use must not include the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses
- 6. Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used
- 7. The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials
- 8. The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut & paste disabling, etc.

It is important to keep in mind what the TEACH Act does not allow. The exemptions under TEACH specifically **do not** extend to:

- Electronic reserves, course packs (electronic or paper) or interlibrary loan (ILL).
- Commercial document delivery.
- Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
- Conversion of materials from analog to digital formats, except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures.

It is also important to note that TEACH does not supersede fair use or existing digital license agreements.

APPENDIX C

Creative Commons Licensing¹

Creative Commons (“CC”) Licensing is a nonprofit organization that offers copyright holders a standardized way to grant permissions to use their works. CC licenses allow a copyright holder to change the copyright terms from the default of “all rights reserved” to “some rights reserved.”

If you encounter a CC licensed product or work, be mindful of what that license allows the user to do with that material. The following are examples of CC licenses and what specific uses are permitted under each license. These licenses are listed from the most to least restrictive.

1.  **Attribution-NonCommercial-NoDerivs CC BY-NC-N**

This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can’t change them in any way or use them commercially.

2.  **Attribution-NonCommercial CC BY-NC**

This license lets others remix, retweak, and build upon your work non-commercially, and although their new works must acknowledge you and be non-commercial, they don’t have to license their derivative works on the same terms.

3.  **Attribution-ShareAlike CC BY-SA**

This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. This license is often compared to “copyleft” free and open source software licenses. All new works based on yours will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.

4.  **Attribution-NonCommercial-ShareAlike CC BY-NC-SA**

This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms.

5.  **Attribution-NoDerivs CC BY-ND**

This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.

6.  **Attribution CC BY**

This license lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This is the most accommodating of licenses offered. Recommended for maximum dissemination and use of licensed materials.

¹ This was taken from the Creative Commons licensing website found at <http://creativecommons.org/licenses/>

APPENDIX D
Checklist for Fair Use

This checklist is a tool to assist you in applying the balancing test for determining whether you may make or distribute copies of works protected by copyright without having to obtain the permission of the copyright holder. It is recommended that you complete and retain this form in connection with each “fair use” of a copyrighted work.

Name: _____ **Date:** _____ **Class or Project:** _____

Title of Copyrighted Work: _____ **Portion to be used (e.g. pages):** _____

Directions: For the four sections below, determine whether a factor favors or disfavors a finding of fair use. Where factors favoring "fair use" predominate over those opposing, reliance on the fair use exception is justified. Where less than half of the factors favor "fair use," permission should be obtained before copying or disseminating copies of the work.

1.) PURPOSE

Favoring Fair Use

- Educational/Teaching
 - Copies for Classroom Use
 - Research/Scholarship
 - Criticism/Commentary
- Transformative Use
 - Parody
- Nonprofit Use

- Non-Transformative
 - Verbatim/Exact Copy
- Profit-Generating Use

Opposing Fair Use

- Creative (art, music, fiction)
- Consumable (workbooks, tests)
- Unpublished Work

2.) NATURE OF COPYRIGHTED MATERIAL

Favoring Fair Use

- Published Work
- Factual, nonfiction, news
- Directly related to use

Opposing Fair Use

- Large Portion or Entire Work
- Portion used is the ‘essence’ of work
- Portion > necessary for Educ. purpose

3.) AMOUNT

Favoring Fair Use

- Small Portion
 - Single chapter
 - Journal article
 - Excerpt less than 10% of work
- Portion is Relevant to Educ. Purpose
- Portion is Not Essence of Entire Work

Opposing Fair Use

- Cumulative Effect of Copying would be to substitute for purchase of the copyrighted work

4.) EFFECT ON THE MARKET FOR ORIGINAL

Favoring Fair Use

- No significant effect on the Market or Potential Market for the Copyrighted Work
- One or Few Copies Made/Distributed
- No longer in print
- No licensing mechanism
- Restricted Access
- Spontaneous

- Numerous Copies Made/Distributed
- Available licensing mechanism
- Off-Prints Available
- Will be made publicly available (Web)
- Repeated or long-term use

Opposing Fair Use

- Commercial
- Entertainment

Revised from the “Checklist for Conducting a Fair Use Analysis” from Cornell University, available at http://copyright.cornell.edu/policies/docs/Fair_Use_Checklist.pdf