

**SOUTHERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE
BOARD OF GOVERNORS
SCP-1004**

SUBJECT: Copyright Policy and Laws

REFERENCE: US Copyright Act, United States Code Title 17 Chapters 1 – 8 and 10 – 12

ORIGINATION: March 2019

EFFECTIVE: May 29, 2020

REVIEWED: New Policy

SECTION 1. PURPOSE

- 1.1 The purpose of this policy is to establish guidance to the individual concerning the proper use of copyrighted materials under the federal Copyright Act and to encourage administration, faculty, staff, and students to use legal methods to acquire copyrighted materials.

SECTION 2. SCOPE AND APPLICABILITY

- 2.1 Applies to all Southern West Virginia Community and Technical College administration, faculty, staff, and students as already designated by our other procedures and policies.

SECTION 3. DEFINITIONS

- 3.1 Copyright – Exclusive legal right to reproduce, publish, perform, sell or distribute a work or derivative of a work that is given to the author or creator of the work. Copyright is also the legal right one can obtain from the creator to share the work. Under federal copyright law, copyright subsists in “original works of authorship” which have been fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. These works include:
- 3.1.1 Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases or bibliographies;
 - 3.1.2 Musical works, including accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works, if fixed (as in notation or video);
 - 3.1.3 Pictorial, graphic, and sculptural works, including photographs, diagrams, sketches, and integrated circuit masks;
 - 3.1.4 Motion pictures and other audiovisual works, such as videos;
 - 3.1.5 Sound recordings; and
 - 3.1.6 Internet web sites.

Copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it may be embodied, illustrated or explained. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described could be freely copied unless it enjoys some other protection, such as a patent.

- 3.2 Author – Creator of the original work.
- 3.3 Infringement – Using the copyrighted material without a “fair use” purpose or permission or a license, which may cause a breach of the copyright law and subject the infringer to civil and/or criminal penalties under federal or state law.
- 3.4 Fair Use – The idea that brief excerpts of copyrighted materials may be quoted verbatim for purposes such as teaching (including multiple copies for classroom use), scholarship and research, without the need for permission from the copyright holder. To determine whether or not the use made in any particular case is a fair use, consider the following factors:
 - 3.4.1 The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
 - 3.4.2 The nature of the copyrighted work;
 - 3.4.3 The amount and substantiality of the portion of the work used in relation to the copyrighted work; and
 - 3.4.4 The effect of this use on the potential market for or value of the copyrighted work.
- 3.5 Public Domain Work – A work that is no longer covered by copyright and may be used at any time without the permission of its creator. Works posted on the internet are not necessarily in the public domain.
- 3.6 Digital Millennium Copyright Act (DMCA) – The part of federal copyright law that regulates digital material such as videos, DVDs, computer programs, photographs, and recordings.
- 3.7 Work for Hire – A work that was created by an employee within the scope of his or her employment that was specifically ordered or commissioned for use by his or her employer. This definition includes works prepared by employees in satisfaction of sponsored agreements between the College and outside agencies. Certain commissioned works are also works for hire if the parties so agree in writing. The employer, by law, is the “author” – hence the owner – of works for hire for copyright purposes. Ownership in a work for hire may be relinquished to the employee or others only by an official of the College authorized to do so.

SECTION 4. POLICY

- 4.1 This policy is intended to protect the rights of authors and creators of copyrighted works. It is also intended to inform Southern West Virginia Community and Technical College administration, faculty, staff, and students of the rules and consequences for infringing on the rights of authors and creators whose works are copyright protected. This institution will not be held responsible or liable for any monetary award granted to any author or creator upon proof of infringement in a court of competent jurisdiction.

SECTION 5. BACKGROUND OR EXCLUSIONS

- 5.1 To make sure that administration, faculty, staff, and students do not infringe on copyright and are aware of the penalties that might be incurred as a result of copyright infringement.

SECTION 6. GENERAL PROVISIONS

- 6.1 The materials that are copyrighted are protected during the life of the author and up to 70 years after the author's death or, in the case of works for hire or anonymous/pseudonymous works, 95 years from publication or 120 years from creation, whichever is shorter. It is up to the person desiring to use the material to determine whether the item is protected by copyright or not. A copyright does not have to be registered to be protected.
- 6.2 Southern's personnel shall have all rights in copyright for their personalized course materials and scholarly works, while Southern's students shall have all rights in copyright for all intellectual property created without the use of substantial College resources. The College owns all rights in copyright for work produced under third-party agreements as stated in those agreements; for intellectual property created by personnel in the scope of their employment (other than personalized course materials or scholarly works) or with the use of substantial College resources; and by students with the use of substantial College resources.
- 6.3 Fair Use – A use of copyrighted material for purposes of criticism, reporting, teaching, scholarship, and research is not an infringement of copyright, but that is not enough to withstand a suit or claim against the use of the material. Before using the desired material, consider the following four questions:
- 6.3.1 What is the purpose of the use? This question can be challenged, and the individual using the material must have proof that his or her use of the material was for nonprofit, educational purposes and not for commercial uses or monetary gain. It is important to note that not all educational uses are covered by fair use. To be considered educational, the use must be “transformative,” that is, it must do more than merely recast an original work into a new mode of presentation (i.e., recasting a novel as an e-book, audiobook or translation into another language; these things are likely to be found to be derivative and, thus protected by copyright). Functions that may be considered transformative include criticism, comments, news reporting, scholarship, research or parody.
- 6.3.2 What is the nature of the copyrighted work? Factual nonfiction works such as lab manuals, workbooks, and dictionaries support educational purposes and therefore are most likely “fair use.” Fictional works fall under a more strict copyright coverage because of the creativity it took to create it. Digital materials also fall under strict copyright protection because of the monetary value placed on digital format. Click this link (<https://librarycopyright.net/resources/exemptions/index.php>) to use a tool that will assist you in determining whether your intended use of copyrighted material falls within a statutory exception for instructors.
- 6.3.3 What amount of work will be used? This factor focuses on whether the use employs more of the copyrighted work than necessary and measures how much of the original work was copied. Generally speaking, the greater the amount of a work that is used, the less likely it will be considered fair use. Copying the entirety of a work can be justified as a fair use when it is reasonably appropriate to achieve a transformative use and does not offer a competing substitute for the original. For example, copying an entire work in order to make it searchable may be permissible under fair use if only snippets of the work are capable of being viewed in the search results. In other circumstances, copying and disseminating an entire work is likely not going to be found to be a fair use.
- 6.3.4 What will the effect be of this use to the potential market for or value of the copyrighted work? Will the use of the materials have a negative impact on the ability of the author to reap monetary benefits from the work? If a use competes with or takes sales away from the copyright holder or avoids payment of a royalty in an established market, it will probably not be considered a fair use. If many copies of the work are widely distributed (i.e., the work is used in multiple sections of a course or

is distributed to the general public) or if the use of a work appeals to the same audience as the original work, it is less likely the use will be seen as a fair use. Even if a use is a fair use for one semester, repeated use of copyrighted materials semester after semester may not be considered a fair use, because there is enough time to seek a license from the copyright holder to use the work.

- 6.3.5 Fair use is an important doctrine, but should be used with caution. There is no formula to ensure that a predetermined percentage or amount of a work – a specific number of words, lines, pages or copies – may be used without permission.
- 6.3.6 None of these four factors described herein and set forth in the law is conclusive, and the weight to be given to each will vary in each instance. It is difficult to predict whether a particular use will fall within the scope of fair use, because the analysis is highly fact-specific.
- 6.4 Library database articles are readily available to our users. These materials are free to individuals with authorized access to read, view or listen to, even if it is copyrighted. If an article is used more than the contract allows, the library will see if the material can be purchased for use in that specific case.
- 6.5 Section 108 of the copyright law provides limited exceptions for libraries and archives to make copies in specified instances for preservation, replacement and patron access. These exceptions will generally not apply to faculty, students or staff outside of the library.
- 6.6 Digital Millennium Copyright Act (DMCA) – An amendment to copyright law that criminalizes production and dissemination of technology, devices or services intended to circumvent measures that control access to copyrighted works (commonly known as digital rights management or DRM) and the act of circumventing an access control, whether or not there is actual infringement of copyright itself. The DMCA also heightens the penalties for copyright infringement on the internet.
 - 6.6.1 In addition to the safe harbors and exemptions the statute specifically provides, Section 1201(a)(1) requires that the Librarian of Congress issue exemptions from the prohibition against circumvention of access-control technology. Exemptions are granted when it is shown that access-control technology has had a substantial adverse effect on the ability of people to make non-infringing uses of copyrighted works, including educational and accessibility uses.
 - 6.6.2 The Librarian of Congress is required to update these exceptions every three years. The 2018 list of exceptions can be found here: <https://www.copyright.gov/1201/2018/faqs.html>
- 6.7 Public Domain Works – Once a copyright expires, a work is said to be in the public domain. Once a work is in the public domain, anyone can copy, distribute, display or modify the work without permission from the copyright holder.
 - 6.7.1 Most materials found on the internet, even if publicly available for free, are not in the public domain and are subject to copyright protection.
 - 6.7.2 If a work is not in the public domain, someone who wishes to use the work generally needs a license to copy and distribute the work to students, unless the use falls within the doctrine of fair use, as discussed above.
 - 6.7.3 Faculty and staff should assume that every work is protected by copyright unless the user can establish that it is not protected by a valid copyright. To determine whether a copyright still exists, call the Copyright Office in Washington (202-707-3000, 1-877-476-0778 or www.loc.gov/copyright) or check the Copyright Office website (www.copyright.gov/records/index.html).

6.7.4 Faculty and staff should not rely on the presence or absence of a copyright notice (©) to determine whether a work is protected by copyright, because a notice is not required for many works. It is unlikely that the absence of a copyright notice would affect the validity of the copyright.

6.8 Copyright infringement and other illegal activities by the College's administration, faculty, staff, and students are strictly prohibited. Violation could result in disciplinary action in accordance with the provisions of the Student Handbook, the Faculty Handbook or the Staff Handbook as appropriate.

SECTION 7. RESPONSIBILITIES

7.1 Administration will inform the faculty and staff about the copyright law. The person or persons using the copies will be held responsible for upholding the copyright law.

7.2 Faculty will educate their students about copyright and plagiarism and how to properly cite materials using their preferred format for their class work. The "Know Your Copy Rights" brochure is a resource the faculty should use to educate themselves and their students. The brochure is available online at <https://www.knowyourcopyrights.org/storage/documents/kycrbrochure.pdf>.

7.3 The institution will provide an official statement that the faculty will include in their syllabi about copyright.

7.4 There are both civil and criminal repercussions for copyright infringement.

7.4.1 The holder of a valid copyright can file a civil lawsuit, and anyone found liable for civil copyright infringement may be ordered to pay either actual damages or statutory damages affixed at not less than \$750 and not more than \$300,000 per work infringed. For willful infringement, a court may award up to \$150,000 per work infringed. A court can also, in its discretion, assess court costs and attorneys' fees against the person found liable for civil infringement.

7.4.2 Willful copyright infringement can also be a felony violation of federal law, which may result in criminal penalties including imprisonment of up to five years, fines of up to \$250,000 or both per offense.

7.5 All areas where copiers are located will have a brief statement about copyright placed within sight of the copiers.

SECTION 8. CANCELLATION

8.1 None.

SECTION 9. REVIEW STATEMENT

9.1 This policy shall be reviewed on a regular basis with a time frame for review to be determined by the President or the President's designee. Upon such review, the President or President's designee may recommend to the Board that the policy be amended or repealed.

SECTION 10. SIGNATURES


Board of Governors Chair **Date** 04/29/2020


President **Date** 04/29/2020

Attachments: None.

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