

Employees and students shall not reproduce copyrighted materials without prior permission of the copyright owner, except as allowed by the “fair use” doctrine.

Fair Use

The “fair use” doctrine permits limited use of copyrighted materials without obtaining permission from the copyright owner in certain situations, including teaching and scholarship. Fair use is determined using a broad criteria identified in Section 107 of the Copyright Act of 1976. Consideration of all four of the factors below is required before proceeding with use, though all factors do not have to be in favor of use to make it a fair use:

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 the copyrighted work;
3. The amount and significance of the portion used in relation to the entire work; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Online Course Materials

The Technology, Education, and Copyright Harmonization Act (“TEACH Act”) allows an online instructor to use material in the same ways material can be used in live classrooms and provides specific language that applies to online classes. An individual assessment is required to determine whether a given use is protected under the TEACH Act. Individuals should rely on fair use guidelines and the TEACH Act to determine whether they can use copyrighted materials for online instruction.

MiraCosta Community College District

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Effective Date:	11/3/16, 9/10/20
Steering:	AAC/AS
CCLC Update:	#6, 2/04
References:	Education Code Sections 32360 and 67302; U. S. Code Title 17, Copyright Act of 1976 <i>Basic Books, Inc. v. Kinko's Graphics Corp.</i> (S.D.N.Y. 1991) 758 F.Supp. 1522; and <i>Princeton University Press v. Michigan Document Services, Inc.</i> (6th Cir. 1996) F.3d 1381 The TEACH (Technology, Education and Copyright Harmonization) Act, USC 17, Copyright Act, §§ 110(2), 112
CCLC Update:	#6, 2/04
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The following criteria are generally required to use copyrighted material in online instruction:

- The online instruction is mediated by an instructor.
- The transmission of the material is limited to receipt by students enrolled in the course; only students enrolled in the class may have access to the material.
- Technical safeguards are used to prevent retention of the transmission for longer than the class session or to limit student ability to further distribute the materials.
- The performance is either of a non-dramatic work or a “reasonable and limited portion” of dramatic literary, musical, or audiovisual work comparable to that displayed in a live classroom session.
- The work is not a textbook, course pack, or other material typically purchased or acquired by students for their independent use and retention, including commercial works that are sold or licensed for the purposes of digital distance education.
- The district does not know, or have reason to know, that the copy of the work was not lawfully made or acquired.
- The district notifies students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

Obtaining Permission to Use Copyrighted Material

District employees will follow the guidelines provided by the United States Copyright Office in Circular 21, “Reproduction of Copyrighted Works by Educators and Librarians.” A copy of this document is available from the U.S. Copyright Office and can be found online at <http://www.copyright.gov/circs/circ21.pdf>. A copy is also available at the office of the vice president, Instructional Services.

Responsibility for obtaining permission to print, duplicate, or display copyrighted works shall rest with the individual using the copyrighted material.

The following organizations and resources provide additional information and guidance regarding use of copyrighted material.

1. Copyright Clearance Center, www.copyright.com.
2. American Libraries Association, www.ala.org, click on “Washington Office” or “issues and advocacy.”
3. University of Michigan Library Copyright Office, www.lib.umich.edu/copyright;
4. Copyright & Fair Use Stanford University Libraries, <http://fairuse.stanford.edu/>
5. The Association of American Publishers, www.publishers.org.
6. National Association of College Stores, www.nacs.org.