MCU General Guidelines on Copyright and Fair Use

Fair Use

1. Under the “fair use” rule of copyright law, an individual may make limited use of another author’s or creator’s work without asking permission. Fair use is intended to support teaching, research, and scholarship, but educational purpose alone does not make every use of a work “fair.” Fair Use does not give educators blanket exemption from copyright law.

2. “Fair use” is open to interpretation. It is always important to analyze the use of a particular work against the following four factors. Determination of “fair use” is always a balancing act and all factors must be considered in each case. Although at MCU Factor 1 always favors “fair use” and Factor 2 usually favors “fair use” Factors 3 and 4 have a greater impact on the determination and must be honestly and fairly weighed and evaluated.

   a. Factor 1: The purpose in using the work. Is it for monetary gain or for educational or research purposes? MCU as a non-profit educational institution all uses of copyrighted material for MCU classroom or distance education would favor a Fair Use determination.

   b. Factor 2: The nature of the work – is it fact or fiction? Works that contain facts are more open to fair use justification since the facts and ideas themselves are not copyrighted. What is copyrighted is the sentence structure, expression, or form in which the facts are presented or fixed. The majority of the material used at MCU is factual and would favor Fair Use.

   c. Factor 3: The amount and substantiality used. Is the amount used a significant or central part of the work? Using the entire work, the majority of a work, or the section that can be seen as the central and most significant content of a work may be denying the rights holder the opportunity to sell that work and is not fair use.

   d. Factor 4: The effect on the potential market value of the work. This factor is the most difficult to evaluate. If the amount used is significant or the item is easily available for purchase or copyright can be obtained from CCC that weighs against a determination of fair use. If the amount used is relatively small or the item is no longer available on the market and copyright approval cannot be obtained either from CCC or the rights holder that weighs in favor of fair use.

Copyright Guidelines for MCU faculty

The following guidelines cover the most common types of uses and types of materials used at MCU. These guidelines are not definitive or all inclusive; their purpose is to provide MCU administrators, faculty, librarians, students, employees, and others with a standard approach for addressing common academic copyright issues.

1. Course packs (paper or digital) E-Reserves or other Material Posted in the Learning Management System

   a. Limit materials distributed in course packs (paper or digital), through e-reserves, and posted on the learning management systems to:

   i. Single articles
ii. For books:
   1) a single chapter from longer works (works of 10 or more chapters total),
   2) 10% or less of shorter work (9 or fewer chapters)
   3) Several charts, graphs or illustrations
   4) For music, film or videos: 10% or 3 minutes, whichever is less
b. Always include:
   i. Any copyright notice from the original
   ii. Appropriate citations and attributions to the source
c. Whenever possible, link to articles found in databases licensed for MCU use by the Library of the Marine Corps.
d. Never copy, scan and post articles from LoMC licensed databases into the LMS or eReserves; none of the library’s database licenses allow this practice.
e. Limit access to copyrighted material
   i. To students enrolled in the class for the period of the class.
   ii. Include a warning that further copying or distribution is prohibited.
   iii. Terminate access at the end of the class term.

2. Classroom Handouts.
   a. Classroom handouts, defined as any single document that is distributed to students as part of the curriculum, may be used one-time only in only one course during the academic year, no more than one copy is to be made per student in the course, and the handout may not be used again in any course within the school in subsequent academic years without permission from the rights holder.
   b. The inspiration and decision to use the work as a classroom handout and the moment of its use for maximum teaching effectiveness must be so close in time that it would be unreasonable to expect a timely reply to a request for permission.

3. Films, Audios and Other Visually-or Aurally Recorded Performances in a Residential or Distance Education Classroom.
   a. Films, audios or other recorded performances may be played by an instructor or student in a residential face to face classroom setting or in an online synchronous or asynchronous distance education class if:
   b. The DVD, CD, MP3, or other medium used is a legally produced copy owned by the government, owned by the course instructor, or owned by another member of the class. Use of non-federal government-owned borrowed copies (e.g., copies borrowed from a local public library or rented or streamed from commercial source such as Netflix, Hulu, etc., found on YouTube or located on music sights such as Pandora and Spotify) is not permitted.
   c. Access to the classroom, whether face-to-face or online, is restricted to the students enrolled in the class.
Methods used to prepare the film or audio for viewing/listening online (i.e., transferring the medium into a streaming format) does not involve overriding Digital Rights Management software on the original.

Fair use DOES NOT cover playing films or audios for an entire school. Permission to perform for an entire student body must be requested and paid for.

**Guidelines for Using the TEACH Act of 2002 by the College of Distance Education**

1. The *Technology Education and Copyright Harmonization Act of 2002 (TEACH Act)* enables CDET to distribute and use copyrighted materials to either synchronous or asynchronous classes as long as CDET meets certain requirements, which are:
   a. CDET must be part of an accredited, non-profit educational institution (MCU).
   b. The use must be part of mediated instructional activities.
   c. Access must be limited to students enrolled in a specific class.
   d. The use must either be for synchronous (e.g. “live”) or asynchronous class sessions.
   e. The use must not include the transmission of textbook materials, materials “typically purchased or acquired by students,” or works developed specifically for online uses.
   f. Only “reasonable and limited portions,” such as might be performed or displayed during a typical live classroom session, may be used.
   g. MCU must have developed and publicized its copyright policies, informing students that course content may be covered by copyright,
   h. MCU must include a notice of copyright on the online materials.
   i. MCU must implement technological measures to ensure compliance with these policies, beyond merely assigning a password. This may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut and paste disabling, etc.

2. The TEACH Act does not allow CDET to:
   a. Create or use electronic reserves, course packs (electronic or paper) or interlibrary loan (ILL) without determining Fair Use and/or requesting and receiving permission from the rights holders.
   b. Use commercial document delivery to transfer materials to distance education students.
   c. Copy (digital or analog) and post or distribute textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
   d. Convert 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.

3. The TEACH Act does not supersede “Fair Use” or digital licensing agreements.

4. The TEACH Act contains many ambiguities. For more information on interpreting the TEACH act see: [The TEACH Act and some Frequently Asked Questions](https://www.alaweb.org/teachact/index.php) (American Library Association, TEACH Act FAQs)