SUNY Orange Employee Guidelines for Using Copyrighted Material on the Internet

The Communications Office is happy to help with questions and concerns about copyright and can help with finding material appropriate for publishing publicly to the internet. Please contact Justin Cole (x4402) or Mike Albright (x4728).

Current case law for copyright issues is lacking across many areas and most copyright disputes do not end up in court. However, due to the potential for costly litigation from copyright violation, it is strongly recommended that organizations are proactive in their copyright guidelines in creating a consistent interpretation across all departments.

This document was created to provide consistent, college-wide guidelines for using copyrighted material on the internet. The guidelines can apply to any media or content: text, music, video, photos, art, etc.

These guidelines specifically apply to any publicly accessible, College-owned or operated website, social media site, or other online publicly accessible presence that is operating on behalf of the College, a College department or office, or in your role as a College employee.

These guidelines do NOT apply to personal accounts that are unrelated to your role or department at the College. Nor do they apply to any instructional materials operating solely within the classroom environment, either face-to-face or online, that are ONLY accessible by the instructor and students for a particular class or course.

Based upon current copyright laws and the many facets of ownership, exemptions, fair-use and licensing, the College has developed the following guidelines:

TEACH Act:

The Technology, Education and Copyright Harmonization Act (TEACH Act) was passed into law in November 2002. The TEACH Act allows faculty to use copyrighted works in digital teaching materials both for students enrolled in traditional classroom settings as well as for distance learning courses. In order to use materials that qualify under the TEACH Act, the following conditions must be satisfied:

- 5The material must be provided at the direction of or under the supervision of a faculty member and must be an integral part of the curriculum.
- The amount of material provided must be comparable to that allowed under the *fair use* doctrine for live classroom session (e.g., short poems or essays, or photographic images).
- Notice must be provided to students that the use of materials may be subject to copyright protection.

- The materials available to students can only be available for a "limited duration" (no longer than a class session).

The TEACH Act does not apply to the following:

- The use of works specifically created for use as distance learning products.
- The use of works that you know or have reason to believe are not lawfully made (i.e. copyrighted films and music downloaded from the Internet).
- The conversion of print or other analog versions of works into digital formats unless no digital version of the work is available.

NOT PERMITTED

Posting on a College-owned website or social media account any work that is either a direct re-posting of copyrighted material (such as a music track, or photos, or video, etc.), or contains copyrighted materials, without permission or a license. In cases where there is disagreement on whether works posted online are infringing on copyright, the Vice President of Institutional Advancement, or his/her designee, will make the final determination. If the works in question are determined to be infringing on copyright, these works should be removed as soon as possible. The Vice President of Academic Affairs, or his/her designee, will preside over infringement questions and/or violations related to library and academic copyright guidelines.

PERMITTED

YOUR OWN/YOUR STUDENT'S OWN CREATED-IN-CLASS *ORIGINAL* MATERIAL: It is always permitted to post your own, **completely** original material and it is recommended that this be used where at all possible.

> **CAUTION:** "Completely original" means the **WHOLE** work is original, and contains no other images, music, text or other media taken from another work by another content creator.

LINKING TO OTHER MATERIAL: Linking to other appropriate, legal, and relevant material hosted on other sites is permitted.

> **CAUTION:** Reposting material is **NOT** the same as linking. Reposting should be considered under the same guidelines as creating a new post.
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> **CAUTION:** Linking to material which itself infringes another's copyright may subject you to liability for contributory copyright infringement. Do not link to pirated or otherwise infringing material.

PUBLIC DOMAIN MATERIAL: Posting material clearly marked as public domain is permitted.

CAUTION: You need to verify the material is public domain. You **CANNOT** assume something is public domain just because it is on the internet. Images found using Google Images or other websites are not automatically "free to use" and many, if not most, are copyright protected.

CREATIVE COMMONS MATERIAL: Posting material clearly marked as under a creative commons license is permitted.

CAUTION: You must read the details of the creative commons license and follow any requirements, such as making an attribution credit, within your work. Failure to follow the license may subject you to liability.

COPYRIGHTED MATERIAL WITH PERMISSION: Posting copyrighted material with the owner's written permission is permitted.

CAUTION: You **MUST** have the permission from the copyright owner in writing or as an electronic document (such as an email). If you receive permission from the copyright owner, it is your responsibility to keep this permission on file and to provide it to the College Communications Department upon request.

COPYRIGHTED MATERIAL WITH A LICENSE: Posting copyrighted material for which you have a license for distribution on social media is permitted.

CAUTION: Make sure your license **specifically** permits usage on social media/websites before you post! If you purchase a content license, it is your responsibility to keep this license information on file and to provide it to the College Communications Department upon request.

FAIR USE: Posting criticism, commentary, critique, substantial transformation, or parody of an original work is permitted to a certain extent.

CAUTION: Make sure the content does not contain a larger portion of the original work that is necessary for that purpose.

CONSIDERATIONS:

NOTE ON PERMISSION AND LICENSES GUIDELINES: The copyright owner may give you specific permissions to post their work on social media or online. Licenses to use copyrighted works are also available in many cases, however, make sure these licenses **specifically give permissions to use online/in social media, or provide an "any use" permission before posting.**

If you receive permission from the copyright owner, it is your responsibility to keep this permission on file and to provide it to the College Communications Department upon request.

If you purchase a content license, it is your responsibility to keep this license information on file and to provide it to the College Communications Department upon request.

THE NATURE OF THE CONTENT POSTED ONLINE IS IMPORTANT: "PROMOTION OF THE COLLEGE" VERSUS "EDUCATIONAL USE"

Although we are a non-profit organization, the public website and any publicly accessible online presence or social media site on behalf of the College may be considered promotional in nature, rather than educational, and therefore not subject to educational copyright exemptions.

For example, a video of a lecture given by a SUNY Orange professor made available online would be considered educational. A video of the Holiday Open House with "White Christmas" playing in the background would be considered promotional, and it would infringe on the copyright of "White Christmas".

The College purchases licenses from BMI, ASCAP and SESAC (Public Performance Organizations, or PROs) to permit the College to use copyrighted music for College events and performances.

These licenses do **NOT** extend to public internet usage, especially when music is included in videos (which require additional master and sync licenses). The College does have an internet radio station (Colt Rock Radio) which requires an additional SoundExchange license for non-interactive digital transmissions (such as an internet radio station). These licenses do not cover music on social media or websites.

POSTING CONTENT PUBLICLY ONLINE IS DIFFERENT THAN USING CONTENT IN THE CLASSROOM

Within the classroom setting, use of segments of copyrighted materials is permitted when used as part of the class session and when the copyrighted material is directly related to the course itself. However, this material should be restricted to **ONLY** the students enrolled in that course and no further copies should be made available.

When you post publicly online (website or on social media) that content is now available to millions of people. It is no longer just available to enrolled students and is no longer part of the class setting. Even though the material may have been created in an educational setting, posting the material online may make it promotional in nature.

Therefore, what is permitted in the classroom is not the same as what is permitted to be posted publicly online.

FAIR USE GUIDELINES

The Fair use defense to copyright infringement permits copying of works protected by copyright for limited purposes. The fair use provision of the Copyright Act allows reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reports, teaching, scholarship, and/or research. The guidelines that follow provide principles for all members of the College community who wish to use and/or digitize copyrighted works under fair use rather than by seeking authorization from the copyright owners for noncommercial educational purposes.

There are four factors to consider when determining whether the fair use doctrine applies.

1. **Purpose & Nature of Fair-Use:** Is use Transformative? Has it been turned into a completely new original work? Is it criticism/commentary/critique or parody of the original work? Is the use primarily for commercial gain?

   CONSIDERATION: If you are just adding the content to your work to make your work "cooler" or more appealing, this would **NOT** be Fair-Use.

   CONSIDERATION: Uses in nonprofit educational institutions are more likely to be fair use than works used for commercial purposes, but not all educational uses are fair use.

2. **Nature of Work:** Is it someone's creative work? Or is it a factual work?

   CONSIDERATION: If it is an easily available, creative work, this would more likely **NOT** be considered Fair-Use.

   CONSIDERATION: Reproducing a factual work is more likely to be fair use than a creative, artistic work such as a musical composition.

3. **Amount of the Portion Used:** Has a substantial portion or the "essence" of the original work been used?

   CONSIDERATION: Although the smaller the amount used, the more likely it is to fall on the side of "Fair-Use", there is **no minimum amount or time limit** written in case law. In some cases, a few notes from a musical work have been considered the "essence" of the work by courts. While not automatic, reproducing smaller portions of a work is more likely to be fair use than larger portions.

4. **Effect of Use Upon Market or Value:** Will use diminish or prejudice the potential sale of the work or the marketability or demand for a work?

CONSIDERATION: Are you using something that would normally cost money to obtain, view or listen to? If so, this would more likely **NOT** be considered Fair-Use.

CONSIDERATION: Uses which have no or little market impact on the copyrighted work are more likely to be fair than those that interfere with potential markets.