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TOPIC: Copyright and Fair Use - Procedures

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Policy Number:  
D12

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## Copyright and Fair Use Procedures

### Copyright Protections and Fair Use Principles

Under U.S. law, a work is copyrighted at the instant of creation when it is fixed in a tangible medium of expression for a period of more than transitory duration. The author of a work is given certain exclusive rights to do or to authorize the following:

- To reproduce the copyrighted work
  - To prepare derivative works
  - To distribute copies of the copyrighted work publicly
  - To perform the copyrighted work publicly
  - To display the copyrighted work publicly
  - In the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission
- (17 U.S.C 102)

If an individual or entity does not own the copyright in work, does not have permission to do the above rights, and does it anyway, that person or entity is infringing. There are many statutory exemptions to these rights. The major exemption is **Fair Use**.

**Fair Use:** The fair use exemption (Section 107, U.S. Copyright law) permits limited reproduction of copyrighted works for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, without permission of the copyright owner. However, nonprofit educational use does not automatically establish a condition of fair use. Determination of fair use is evaluated on an individual, case-by-case basis. The four factors to consider are:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for a nonprofit educational purpose.
2. The nature of the copyrighted work (creative or factual)
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for a value of the copyrighted work.

Statutory damages for willful infringement are significant. If a person or entity can demonstrate that evaluation of the four factors took place and lead to the belief of fair use, statutory damages can be considerably reduced. (17 U.S.C. 107)

### Compliance/Responsibilities

College faculty and staff desiring to use copyrighted materials are responsible for compliance with federal copyright laws, including decisions on the utilization of fair use exemptions. If questions occur, the Library will provide assistance and resources to the Cloud faculty and staff in understanding and complying with copyright law. The College

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does not assume legal responsibility for any independent application of copyright principles made by College faculty or staff that do not meet the terms of the Copyright Act or this College's copyright policy. Permissions must be obtained in all instances where the employee determines that the desired use exceeds fair use or other limitations on the rights of copyright owners.

### **Displaying Media on Campus Classroom use**

Showing copyrighted audio-visual materials (VHS, DVD, Blu-ray) is permissible under the following conditions:

- The use must be by instructors or by students.
- The use is part of mediated instructional activities.
- The showing takes place in a classroom or other instructional venue. For online, the showing must be for a specific number of students enrolled in a particular class.
- The video is lawfully made; the person responsible has no reason to believe that the video was not lawfully made. (17 U.S.C. 110)

### **Public Performances**

Any screening outside the classroom sponsored by any Cloud personnel, organizations, committees, or departments is considered a public performance. Unless a film has public performance rights attached, it should be assumed that permission is required for a public screening of the film. The screening of the film is not excused from the "public" designation just because it is an "educational" film, it is being advertised only on campus, or admission is not being charged. The person, organization, committee, or department is responsible for acquiring permission and performance fees.

For more detailed copyright information or to contact someone from the library with questions, please see the **Basic Copyright in Academics Libguide**: (<https://cloud.libguides.com/academiccopyright>) located on the Library Webpage.

### **Digital Millennium Copyright Act**

It may be a violation of copyright law to copy, distribute, display, exhibit or perform copyrighted works without authority of the owner of the copyright. It is Cloud County Community College policy that users of Internet services and equipment provided by Cloud County Community College are responsible for their compliance with all copyright laws pertaining to information they place on or retrieve from the Internet.

To further educate the College community with understanding copyright and compliance, the Library offers resources and guidelines addressing copyright and fair use to inform employees of their rights and responsibilities under the law. More information can be found at:

<https://www.copyright.gov/title17/>.

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<https://www.copyright.gov/fair-use/>

<https://cloud.libguides.com/academiccopyright>

\*The Library also provides several book resources with current copyright information available to reference.