

# **Library Policy for Electronic Reserve Access to Copyrighted Materials**

The library policy for electronic reserve reading services is derived from the fair use provisions of United States Copyright Act of 1976 (Title 17 of the US Code). Section 107 of the Copyright Act expressly permits the making of multiple copies for classroom use. Such educational copying is one of six examples of uses which do not require the payment of a royalty or the permission of the copyright owners provided that the circumstances of the use are fair as assessed by the four factors in section 107 of the Copyright Act, the text of which is as follows:

*Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, is not an infringement of copyright.*

*In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include--*

- 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 substantiality of the portion used in relation to the copyrighted work as a whole;*  
*and*
- 4. The effect of the use upon the potential market for or value of the copyrighted work.*

*The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors (17 USCA 107, current through P.L. 106-580, approved 12/29/00)*

The collections at Mid-State Technical College's Educational Resource Centers are purchased by the College for the nonprofit educational use of students, staff, and faculty. All library materials are acquired with the understanding that there will be multiple uses of a limited number of copies. The library frequently pays a premium institutional subscription price for journals. This price may be many times the individual subscription price, for the privilege of supporting multiple academic users. The purpose of the electronic reserve system will be to supplement course readings and facilitate the making of multiple copies for classroom use by students. Considered within this context, electronic reserve services can be developed by Mid-State Technical College in a manner that conforms with the plain language of the fair use provisions of the copyright law.

### General Policies/Procedures

1. All use of materials placed on electronic reserves will be at the initiative of faculty solely for the non-commercial, educational usage of students. Obtaining copyright permission for materials is the faculty member's responsibility.
2. Whenever possible, materials to be copied or scanned for electronic reserves will be purchased by the library.
3. Longer works, such as complete books, will not be copied for electronic reserve service.
4. There will be no charge for access.
5. Copyright notice will appear on screen in the online reserve system and on copies made of reserve readings to indicate that materials may be covered by copyright law.
6. Materials on reserve will be accessible only by faculty name, course name, course number, and week of assignment. Copyrighted material will be password-protected to assure that only students in the class have access to the reserve materials for the respective course.
7. Electronic files will be removed from the active reserve system when they are no longer used for reserve services.
8. The library will follow the principles of Fair Use when placing materials on reserve.
9. The Copyright Act permits reproduction of unpublished records without securing permission from the copyright owner when the copying amounts to "fair use" of the material. Reproduction of unpublished records, however, may also be subject to special and additional copying restrictions imposed by the record's creator or the donor. The library may require evidence that no restrictions exist for certain materials.
10. When considering placing unpublished works by students on electronic reserve, please make sure to secure permission from the student in writing.
11. Mid-State Technical College's library staff will explain specific procedures regarding electronic reserves and copyright.

The electronic copying and scanning of copyright-protected works for library reserve service are unsettled areas of the law which may be addressed by the Supreme Court or in future revisions of the copyright law. The Educational Resource Center will continually monitor legal developments that may affect the fair use analysis of electronic reserve services to ensure that library services are in compliance with the letter and spirit of the United States Copyright Law.

**For detailed information on copyright, please visit the Association of research Libraries website on copyright information. <http://www.arl.org/pp/ppcopyright/>**

*This policy is subject to change/revision as needed.  
Any change/revision to this policy will be distributed to participating personnel.*

**Fair Use Determinations:**

The following checklist is revised for use by Cornell University from the “Checklist for Fair Use,” a project of the IUPUI Copyright Management Center, directed by Kenneth D Crew, Associate Dean of the Faculties for Copyright Management; for details, please see [www.copyright.iupui.edu](http://www.copyright.iupui.edu)

**1. Purpose and Character of Use – whether it is a commercial nature or a nonprofit educational purposes:***Favoring Fair Use*

- Teaching
- Research
- Scholarship
- Nonprofit use
- Criticism
- Comment
- News reporting
- Transformative or Productive use
  - (changes the work to serve a new purpose)
- Restricted access
- Parody

*Opposing Fair Use*

- Commercial activity
- Profit-generating use
- Entertainment
- Non-transformative verbatim/exact copy
- Bad-faith behavior
- Denying credit to original author

The majority of materials submitted for electronic reserves will be for teaching, scholarship, and research. It will be the rare case in which this factor will cause fair use concerns.

**2. The Nature of the Copyrighted Material***Favoring Fair Use*

- Published work
- Factual and non-fiction based, news
- Important to favored educational objectives

*Opposing Fair Use*

- Unpublished work
- Creative work such as music, art, novels, films, plays, fiction
- Consumable work such as workbooks, tests

The request is for a particular material such as case studies, commercial tests, copied portions of required textbooks, sheet music, substantial selection of poetry.

**3. Amount Copied: The amount and substantiality of the portion used in relation to the copyrighted work as a whole***Favoring Fair Use*

- Small quantity  
(e.g. a small chapter or journal article or other excerpt consisting of less than 10% of the work)
- Portion used is not central to entire work
- Amount is appropriate to education purpose

*Opposing Fair Use*

- Large portion or entire work
- Portion used is the central to work or significant to entire work or “heart of the work”
- Includes more than necessary for education purposes

Amount is measured both quantitatively and qualitatively. No exact measures of allowable quantity exist in the law. Quantity must be evaluated relative to the length of the entire original and in light of the amount needed to serve a proper objective. Consider: (1) Is the material a substantial portion (e.g. one-third or half) of the work? (2) Can the educational purpose be met with a smaller portion?

#### 4. Effect: The effect of the use upon the potential market for or value of the copyrighted work

##### *Favoring Fair Use*

- Use owns lawfully acquired or purchased copy of original work
- One or few copies made and/or distributed
- No significant effect on the market or potential market for copyrighted work
- No longer in print; absence of licensing mechanism
- No similar product marketed by the copyright holder
- Restricted access; limited to students in a class or other appropriate group
- One-time use, spontaneous use (no time to obtain permission)

##### *Opposing Fair Use*

- Could replace sale of copyrighted work
- Numerous copies made and/or distributed
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work  
e.g. CCC licensing or off-prints available
- Affordable permission available for using work
- Will be making it publicly available on the Web or using other means of broad dissemination
- Repeated or long-term use
- Lack of licensing mechanism

The effect of the use on the market is more complicated than other three factors. This factor means fundamentally that if you make a use for which a purchase of an original theoretically should have occurred, then this factor may weigh against fair use.

**Public Domain:**

What is “Public Domain”? It means that a work of authorship is no longer under copyright protection. Or a work is failed to meet the requirements for copyright protection. Works in the public domain may be used freely without the permission of the former copyright holder.

Examples:

- Laws
- U.S. Government documents, except contracted works that indicate copyright ownership
- Previously copyrighted works that have expired or were not renewed
- Works freely distributed by creators with no restrictions on use
- Works published prior 1900. Any work published or republished after 1900 needs to be researched to determine if it is in the public domain