



July 2008

Madison Area Technical College Copyright Procedures

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Madison Area Technical College Copyright Procedures

1. Introduction

MATC respects the rights of both authors and educators in its commitment to excellence and innovation in its educational programs. We have prepared this Copyright Procedures to educate our community about our rights and obligations under the law, and to help the members of our community achieve our educational objectives while complying with the law.

A printed copy of this Procedures should be distributed annually to every MATC instructor.

2. Basic copyright principles

What is protected by copyright?

Copyright protects almost any human expression with some spark of creativity, regardless of quality or importance. To put it simply, just about anything that is written down, drawn or recorded is protected by copyright, including works of fiction or non-fiction, computer programs, paintings, films, musical compositions, and so on. Anything protected by copyright is known as a “work of authorship.”

Copyright does not protect the ideas or facts contained in a work; ideas and facts belong to the public. Copyright protects only the particular expression of facts or ideas. Thus, you do not violate a copyright by extracting facts from a copyrighted work and using those facts in your own work.

What rights does the author have?

Copyright law grants to the author five exclusive rights: the right to reproduce; to adapt; to publish; to publicly perform; and to publicly display. These rights are exclusive, which means that if you want to do one of these things with a copyrighted work, you need the author’s permission.

The author’s exclusive rights are subject to some exceptions, however. These exceptions are particularly important for educators, and they are discussed in detail in section 3 of this Procedures.

Does copyright have to be registered?

No. Copyright protection is automatic, and it applies to every work as soon as it completed. Copyright registration, however, is reasonably easy, and it has advantages if you believe that your work might be infringed.

Do copyrighted works have to have a copyright notice?

Not under current law. It is a good idea, however, to include copyright notice on any work you publish. Proper copyright notice consists of three elements: (1) the word “copyright” or the © symbol; (2) the year of first publication; and (3) the name of the author or copyright owner.

Before 1989, however, a work published without copyright notice generally lost copyright protection and entered the public domain. But there are exceptions, and you should check with the MATC copyright adviser before deciding that a published work has lost its copyright protection.

How long does copyright last?

For works created in 1978 or after by an individual, copyright lasts for the life of the author plus 70 years. If the author is an institution because the work was prepared as a work for hire, copyright lasts 95 years from publication, or 125 years from creation, whichever is shorter.

For works created before 1978, copyright lasts 95 years from date of the original copyright, but only if the copyright was properly attained and renewed. You should check with the MATC copyright adviser for assistance in determining whether a pre-1978 work is protected by copyright.

Works published before 1923, however, are now in the public domain. Under prior copyright law, the copyright of any work published before 1923 would have expired before the new, longer copyright terms took effect.

3. Fair use and educational exemptions

Although the Copyright Act grants authors the right to control and exploit their works, those rights are subject to certain limitations and exceptions. Four of those limitations are particularly important to educators because, under certain limited conditions, they permit educators to make use of copyrighted works without obtaining permission.

3.1. Fair use

Any person may make “fair use” of copyrighted work without obtaining permission. What constitutes fair use, however, is sometimes hard to determine. Whether a particular use is a fair use is defined on a case-by-case basis after consideration of the following four factors:

The purpose and character of the use;
The nature of the work;
The amount and substantiality of the portion used in relation to the work as a whole; and
The effect on the market for the copyrighted work.

Although no single factor is decisive, the fourth factor is often considered to be most important if the other factors are inconclusive.

In connection with the enactment of the Copyright Act of 1976, educators and publishers established procedures for classroom copying of books and periodicals in non-profit educational institutions. MATC endorses these procedures, attached as Appendix A, as an appropriate measure of what constitutes fair use of books and periodicals. These procedures permit making multiple copies of portions of copyrighted works if the copying meets the requirements of brevity, spontaneity, and cumulative effect.

Please note, however, that these procedures do *not* permit the inclusion of book chapters or journal articles in “course packs” without the permission of the copyright owner. The use of book chapters and journal articles in course packs constitutes copyright infringement, as a federal court held in *Basic Books, Inc. v. Kinko’s Graphics Corp.*, 758 F. Supp. 1522 (S.D.N.Y. 1991).

3.2. Face-to-face teaching exemption

Ordinarily, the author has the exclusive right to authorize the public performance or display of a work. Thus, you cannot stage a public performance of a copyrighted play or read a book to the public without the author’s permission. But you do not need permission for such a public performance in the classroom. Section 110(1) of the Copyright Act permits “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction.” If you meet the requirements of section 110(1), your performance or display does *not* need to meet the requirements of fair use.

The section 110(1) exemption permits the instructor to play a rental video in class if the following requirements are met:

The performance of the video is part of the teaching activity of the class;
The class is part of the regular curriculum;
The entire audience is involved in the teaching activity;
The entire audience and the teacher are in the same room or same general area; and
The performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium or workshop.

This exemption applies only to performance or display of lawfully made copies; if the copy was not legally made, it cannot be performed or displayed in the classroom.

3.3. Distance education exemption

Under section 110(2) of the Copyright Act, many performances or displays that would be permitted in the classroom would also be permitted to be transmitted by closed-circuit television or by the Internet to students in remote locations.

Special limitations and restrictions apply to such transmissions, however. Please see section 5.3 of this Procedures for information about providing on-line access to course materials. If you have further questions, please contact the MATC copyright adviser to ensure that your course materials comply with the Copyright Act.

3.4. Exemptions for reproduction for the blind or other people with disabilities

Section 121 of the Copyright Act permits MATC to make copies of some previously published works in braille, audio or digital text for use by persons who are unable to read standard text. For more information contact:

Scott Ritter, Alternative Media Specialist
608-246-6217 sritter@matcmadison.edu

4. Ownership of works created by MATC faculty, staff and students

Faculty, staff and students have different copyright ownership rights in the works they create while at MATC or using MATC resources. For works created by MATC full time faculty, copyright is owned according to Article X: Copyright Agreement of the Collective Bargaining Agreement between the Board of Madison Area Technical College and the Madison Area Technical College Faculty Union Local 243, AFT-Wisconsin, AFT, AFL-CIO. The copyright in works created by MATC staff is generally owned by MATC under the “works made for hire” provision of the Copyright Act. Students generally own the copyright in works they create.

5. Use of copyrighted works in connection with MATC courses

5.1. Course packs

The inclusion of a copyrighted work, or a portion of a copyrighted work, in a “course pack” of materials distributed to students is not a fair use, and does not meet any of the educational exemptions provided in the Copyright Act. Accordingly, a course pack may contain only:

*original material written by the instructor who prepares the course pack;
material in the public domain; or
materials used by permission of the author or copyright owner.*

It is the responsibility of the instructor to seek and secure permission to use the copyrighted materials included in a course pack.

Every course pack that includes copyrighted works must contain a notice to students that the course pack contains copyrighted works. At the time materials are submitted to the MATC Bookstore, the instructor must complete a form identifying the material to be reproduced and must agree to take responsibility for any infringing material contained in the course pack. The instructor must attach to the form documentation of all required permissions. The Bookstore will add to the price of the course pack any required royalties and will collect these royalties and pay them to the appropriate party. The MATC copyright adviser has information that may assist instructors in seeking permission to use copyrighted materials. For further information on course packs contact:

Scott Heiman, Bookstore Manager
608-246-6018 sheiman@matcmadison.edu

Carolyn M. Jarrett, Internal Auditor/Legal Counsel
608-243-4448 cjarrett@matcmadison.edu

MATC strongly encourages instructors to consider an alternative to course packs in making copyrighted material available to students. If the material is publicly available on the Internet or in one of the many on-line databases to which MATC subscribes, the instructor can provide students with the URL or a link to the material.

If the material is not publicly available or not available in one of the MATC Library databases, suggested resources for copyright permission might include the Copyright Clearance Center (www.copyright.com) or course pack service companies such as XanEdu (www.xanedu.com). Contacting the publisher directly may be necessary, in some cases, to secure permission to reproduce the material. The MATC Duplicating Center will continue to print all materials for course packs.

MATC library staff will assist instructors in determining whether material they wish to use is in a database available to MATC students. Library staff will also provide information about using the Copyright Clearance Center or other sources to secure permission.

5.2. Copies distributed in class

Fair use permits instructors to make and distribute in class copies of brief articles, essays or stories (or excerpts of longer materials) if the decision to use such material is made on the spur of the moment. For example, if an instructor discovers a news magazine article related to a topic covered in the class, the instructor could have that article copied and distribute it at the next class meeting.

Such spontaneous copying does not justify the use of the same work in more than one term, and there are limits on how many instances of such “spontaneous” copying are permitted. For further information, see Appendix A, Procedures for Classroom Copying.

The Duplicating Center will duplicate copyrighted material for distribution in class provided the instructor completes a form affirming that the copying meets the requirements of Procedures for Classroom Copying in Appendix A.

5.3. On-line distribution of copyrighted material

Publicly accessible web sites. MATC instructors may find it useful to create course-related web sites to communicate with students, and instructors may use MATC information systems to do so. The web site can contain material created by the instructor or material in the public domain without violating any copyright.

However, the posting of material on a publicly accessible web site is the equivalent of printing and publishing that material. Therefore, the posting of copyrighted material on a publicly accessible web site generally requires the permission of the copyright owner, even if the web site’s purpose is purely educational.

Under some circumstances, the posting of limited portions of a copyrighted work may constitute a fair use of that material. Fair use is explained in section 3.1 of this Procedures. If the use of the material is a fair use, no permission is required. If the web site is purely educational, this is a factor that will count in favor of fair use, but the other fair use factors must also be considered. As a general rule, if the use of the material on a web site would undermine the market for the material, the use is not a fair use.

It will not be a fair use to use a web site as a means of distributing a collection of copyrighted works as a substitute for a course pack. However, in seeking permission to include copyrighted material in a course pack, the instructor may also seek permission to distribute the course pack on-line, either through a publicly accessible web site, or through an access-restricted on-line course.

Thus, through a publicly accessible web site, the instructor can distribute:

materials created by the instructor;
materials in the public domain;
copyrighted materials used with permission of the copyright owner; and
limited portions of copyrighted material, without permission, if the use is a fair use.

Generally, linking to another web site is not copyright infringement, and does not require the permission of the other web site owner. “Deep linking,” that is, linking to a page deep within a web site so that web users can avoid introductory pages that contain terms of use or advertising, may violate the web site owner’s rights. You should seek permission before linking if the link would be a deep link or linking to the site is restricted by terms of use on the site to which you intend to link.

Access-restricted on-line courses. If using an access-restricted on-line course, such as a Blackboard course, instructors can distribute more material than can be distributed on a publicly accessible web site. Under the TEACH Act, a 2002 amendment to the Copyright Act, the distance education exemption generally permits instructors to distribute on-line the same materials that the instructor could present in face-to-face teaching. The face-to-face teaching exemption is covered in section 3.2 of this Procedures. Thus, through an access-restricted on-line course, the instructor can distribute any material that could be distributed on a publicly accessible web site, *plus* materials permitted under the TEACH Act.

Distribution under the TEACH Act is subject to restrictions. The following categories of materials may be distributed under the authority of the TEACH Act:

entire performances of non-dramatic literary and musical works;
reasonable and limited parts of dramatic literary, musical or audiovisual works; and
displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching.

The following materials are specifically excluded from distribution under the TEACH Act:

materials specifically marketed for classroom use for digital distance education;
copies the instructor knows, or should know, have been made illegally; and
textbooks, course packs, electronic reserves and similar materials typically purchased individually by students for independent review outside the classroom.

If the material to be transmitted is in analog form, a digital copy of the material may be made if:

the amount copied is limited to the amount needed for the transmission; and
no digital copy is available without technological protections that prevent its use.

In using materials under the TEACH Act, the instructor must also ensure that:

access to the materials is restricted to students registered in the course;
access to the materials is terminated at the end of the course;
the materials are used at the direction of the instructor;
the materials used are directly related and of material assistance to the course content; and
the materials include the following notice that the materials are protected by copyright.

The materials used in this course are protected by copyright, and they are presented here for use only by students registered for this course.

For further information on the on-line distribution of materials contact the MATC copyright adviser.

5.4. Access protection and archival storage of on-line course material

To meet its obligations under the TEACH Act, MATC institutes the following policies related to the distribution of materials in access-restricted online courses:

- MATC will provide software and secure servers through which instructors can restrict access to on-line course materials to students enrolled in the course;*
- The course instructor is responsible for removing student user names from the course at the conclusion of the course;*
- MATC will not archive access-restricted course material after the conclusion of the course (only TEACH Act materials need to be removed);*
- MATC will ensure that its information systems do not interfere with the technological controls used by the owners of materials to be distributed under the TEACH Act;*
- MATC will use technology that reasonably limits the students' ability to retain or further distribute materials transmitted under authority of the TEACH Act.*

6. Use and reproduction of copyrighted works in the library

The library may make, and place on reserve, *one* physical copy of any work in its collection, and it will do so at the request of an instructor. Such copying is permitted under section 108 of the Copyright Act, and it need not be justified as a fair use.

The library may make, and place on reserve, *multiple* physical copies of a work if it meets the fair use Procedures for Classroom Copying in Appendix A, and access is restricted to students enrolled in the course. Access to such works may also be provided through electronic reserves, again provided that access is restricted to students enrolled in the course.

If the use of a particular work does not meet the fair use Procedures for Classroom Copying in Appendix A, permission of the copyright owner is needed to make multiple physical copies or to place the work on electronic reserve. Library staff will provide information about using the Copyright Clearance Center or other sources to secure permission for making multiple copies or for electronic reserve.

Section 108 of the Copyright Act also permits the library to make a small number of copies to preserve works that are deteriorating or to provide access to works that can no longer be purchased through conventional channels.

For further information on electronic reserves and databases contact the appropriate copyright adviser.

7. Use of copyrighted works for extra-curricular activities

The educational exemptions for teaching activities, whether face-to-face or on-line, do not apply to extra-curricular activities. Therefore, the use of copyrighted materials in extra-curricular activities generally requires the permission of the copyright owner unless it is justified as a fair use.

The use of brief excerpts of copyrighted works to illustrate a speech or lecture would likely be a fair use and would not require permission.

The public performance of a complete work, such as the playing of a videotape of a motion picture, would not be a fair use and would require permission. A performance is "public" if it is "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of family and its social acquaintances are gathered." Videos or DVDs rented from ordinary video rental stores are licensed for home use only, not for public performance. Thus, if a motion picture screening is open to the public or to the members of an official student organization, the motion picture should be licensed from an organization that licenses performances for student groups. The MATC copyright adviser can assist you in contacting such an organization.

MATC has secured permission for the public performance of music in the repertoires of performance rights organizations such as ASCAP, SESAC and BMI, which should include most published or commercially released music. Accordingly, members of the MATC community may publicly perform live or recorded music on the MATC campus or

off-campus at events sponsored by MATC or an MATC organization. These licenses do not apply, and special permission is required for: jukeboxes; the public performance of dramatic works that include music, such as an opera or musical theater; concerts presented by third parties; or the recording of performances of music. Broadcasting or other transmission of performances raises special concerns, which can be addressed by the MATC copyright adviser.

The downloading of recorded music without the authorization of the copyright owner is copyright infringement. Therefore, the use of MATC information systems to download or upload commercially recorded music on peer-to-peer file sharing networks, such as Kazaa or Morpheus, is strictly prohibited.

8. Infringing materials on MATC information systems

MATC will investigate allegations that the posting of material on any MATC information system constitutes copyright infringement, provided that the following information is provided to the MATC Copyright Agent, as required by the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act, 17 U.S.C. § 512:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyright work claimed to have been infringed, or, if multiple copyrighted works at a single on-line site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party;
5. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The MATC Copyright Agent under the Digital Millennium Copyright Act is:

Carolyn M. Jarrett, MATC Copyright Agent
Madison Area Technical College
3550 Anderson Street
Madison, WI 53704
608-243-4448
cjarrett@matcmadison.edu

MATC will take appropriate measures, consistent with the MATC policies on use of MATC information systems and the Digital Millennium Copyright Act, in response to allegations that infringing material has been posted on or transmitted with MATC information systems. These measures may include the removal of infringing material, and in the case of repeated acts of infringement, the termination of the user's MATC information systems account.

9. Copying of microcomputer software [MATC Administrative Policy # 212]

Responsible Administrator:	Vice President for Infrastructure Services
Location of Related Procedures:	Office of Vice President for Infrastructure Services
	Office of Finance Director
	Office of Copyright Agent

The reproduction of software without authorization is a Federal offense. Civil damages for unauthorized software copying can be as much as \$50,000 or more, and criminal penalties include fines and imprisonment.

No person shall make illegal copies of college-owned software, and illegal copies of software shall not be permitted to run on any college-owned computer.

APPENDIX A

Agreement on Procedures for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals

The purpose of the following procedures is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these procedures may not be permissible in the future; and conversely that in the future other types of copying not permitted under these procedures may be permissible under revised procedures.

Moreover, the following statement of procedures is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the procedures stated below may nonetheless be permitted under the criteria of fair use.

PROCEDURES

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book;
- B. An article from a periodical or newspaper;
- C. A short story, short essay, or short poem, whether or not from a collective work;
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below; and,
- B. Meets the cumulative effect test as defined below; and,
- C. Each copy includes a notice of copyright

Definitions

Brevity

- (i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
- (ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

- (iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- (iv) “Special” works: Certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph “ii” above notwithstanding such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher.

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, or more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in “ii” and “iii” above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above

Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:

(a) *substitute for the purchase of books, publishers’ reprints or periodicals;*

(b) *be directed by higher authority;*

(c) *be repeated with respect to the same item by the same teacher from term to term.*

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed MARCH 19, 1976.

Ad Hoc Committee on Copyright Law Revision: by SHELDON ELLIOTT STEINBACH.

Author-Publisher Group:

Authors League of America: by IRWIN KARP, *Counsel*.

Association of American Publishers, Inc.: by ALEXANDER C. HOFFMAN, *Chairman, Copyright Committee*.

MATC Copyright Procedures Contact Information

MATC Copyright Adviser

Carolyn M. Jarrett, Internal Auditor/Legal Counsel
608-243-4448
cjarrett@matcmadison.edu

Course Packs

Scott Heiman, Bookstore Manager
608-246-6018
sheiman@matcmadison.edu

Library Resources

Electronic reserves and databases
Donna Marconnet, Library Services Specialist
608-243-4085
dmarconnet@matcmadison.edu

Copyright clearance for instructional materials and media
Claire Rasmussen, Library Technician
608-246-6085
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Materials for the blind or other people with disabilities

Scott Ritter, Alternative Media Specialist
608-246-6217
sritter@matcmadison.edu

Materials On-line

On-line materials
Carolyn M. Jarrett, Internal Auditor/Legal Counsel
608-243-4448
cjarrett@matcmadison.edu

Access protection and archival storage of on-line course material
Carolyn M. Jarrett, Internal Auditor/Legal Counsel
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