

## MORAVIAN COLLEGE AND THEOLOGICAL SEMINARY

### COPYRIGHT POLICY

Moravian College and Moravian Theological Seminary faculty, administrators, staff and students engage in research which is protected under the U.S. federal copyright law. Compliance with federal copyright law is the responsibility of all members of the Moravian College and Moravian Theological Seminary community. Each member of Moravian College and Theological Seminary is expected to take an interest in how the copyright law applies to their role at the college and act in good faith in the fair use of copyrighted material. Any individual deviating from good faith and fair use of copyrighted material will assume liability for his or her actions and may result in disciplinary action.

### MORAVIAN COLLEGE AND THEOLOGICAL SEMINARY COPYRIGHT GUIDELINES

#### **I. INTRODUCTION**

The Moravian Copyright Policy was revised in 2019 with the express purpose of ensuring that all members of the Moravian College community have easy access to an understanding of how copyright law currently applies to an institution of higher education.

The following guidelines cover various aspects of the copyright law that are relevant to members of the Moravian College community. These guidelines are designed to be a reference point and provide a summary of the various aspects of copyright law that are applicable in the higher education setting.

The United States Copyright Office has developed a Reproduction of Copyrighted Works by Educators and Librarians (<http://www.copyright.gov/circs/circ21.pdf>). These guidelines are limited to actual photocopies that are passed out in class and are not relevant to the online world.

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The following laws govern copyright in the United States and form the basis for the 2019 Moravian College and Theological Seminary policy.

#### A. 1976 COPYRIGHT ACT (<http://www.copyright.gov/title17/>)

U.S. copyright law was conceived by the framers of the U.S. Constitution as a way to protect and promote innovation for a short and fixed period of time.

October 19, 1976 - Copyright Act of 1976 signed into law by President Gerald Ford. This was the first major revision to the copyright act since 1909.

B. DIGITAL MILLENIUM COPYRIGHT ACT (DMCA) (*see* Appendix 1).

[http://www.copyright.gov/reports/studies/dmca/dmca\\_executive.html](http://www.copyright.gov/reports/studies/dmca/dmca_executive.html)

October 28, 1998 - Digital Millennium Copyright Act (DMCA) signed into law by President Bill Clinton. This act was the first to address new developments presented by digital technology, and included anti-circumvention provisions and “safe harbors” for online service providers that comply with notice-and-takedown requirements.

C. 2002 TEACH ACT (*see* Appendix 2)

On November 2nd, 2002, the "Technology, Education and Copyright Harmonization Act" (the TEACH Act), part of the larger Justice Reauthorization legislation (H.R. 2215), was signed into law by President Bush. Long anticipated by educators and librarians, TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education -- including on websites and by other digital means -- without permission from the copyright owner and without payment of royalties. The new law offers many improvements over the previous version of Section 110(2), but in order to enjoy its advantages, colleges, universities, and other qualified educational institutions will need to meet the law's rigorous requirements. Educators will not be able to comply by either accidental circumstances or well-meaning intention. Instead, the law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.

### III. COPYRIGHT CRITERIA AND OWNERSHIP

For a work to be protected under copyright, the law stipulates that it must be:

- 1) an original work of authorship

All works in all mediums *created* by an author fall under copyright protection

- 2) fixed in a tangible medium of expression by or under the authority of the creator

This includes articles, speech notes written on the back of an envelope, web pages, books, music, software, CDs, art works, other audio-visual works, choreography, etc.

Any work that meets the above two criteria falls under copyright law, and the coverage is both immediate and automatic. For any works created after March 1, 1989, the copyright symbol does *not* have to appear on the work.

The creator of the original work is the *copyright owner*.

Copyright can be transferred to another party (i.e. a publisher) with the signing of a legal document. Authors should not sign away all rights in the standard publisher's contract without question because there is often room for negotiation. E.g. a time limit can be set at which time copyright reverts to the creator, or the creator can reserve the right to make copies for his/her own use.

#### **IV. PUBLIC DOMAIN**

Works that fall under the public domain exception are not subject to copyright law. These include:

1. U.S. government employee works

Any work written by a U.S. employee or found on a U.S. governmental website falls under the public domain exception. These works may be used by anyone, although it is appropriate to attribute the source.

2. Works created before 1923

Any work created before 1923 falls under the public domain exception.

3. Works available through the Creative Commons License

Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools

4. Works created by an author but after a period of time the copyright has lapsed

See Appendix 3 for chart denoting when the copyright is terminated. Use of the chart is governed by the Creative Commons Attribution License.

#### **V. FAIR USE**

Fair Use allows copyright materials to be used in classroom instruction, without infringement of copyright law. It is important to note that no single definition of fair use has resulted from lawsuits over fair use. The Courts weight fair use by the following four factors and in some recent lawsuits the lower and appeals courts have not come to the same ruling over what does and does not constitute fair use.

1. **the purpose and character of the use, including whether such use is a commercial nature or is for nonprofit educational purposes**

The purpose and character of the use favors the use of materials in the educational setting. However, it is important to note that current court decisions show that institutions of higher learning must demonstrate how each factor weighs in an individual's decision to use copyrighted materials. Some court decisions have weighed all four factors equally, while others have placed greater weight on factor 3 or factor 4

2. **the nature of the copyrighted work**

Fair use typically falls under two categories:

- a. Comment or criticism or
- b. Parody

3. **the amount and substantiality of the portion used in relation to the copyrighted work as a whole**

Recent court opinions have considered the *quality* of what is used and not just the *quantity*. For example, a professor copies only the introductory and epilogue chapters of *Guns, Germs and Steel*, which constitutes 37 pages out of 425 pages. Is this fair use? This is

unlikely to be considered fair use as it can be argued that these are the only two chapters that a student needs to read to understand the author's premise.

**4. the effect of the use upon the market for or value of the copyrighted work.**

It is never considered fair use if one is copying to avoid paying for the cost of a published work.

More information about fair use is found at this website: <https://www.nolo.com/legal-encyclopedia/fair-use-the-four-factors.html>

Fair use charts that serve as an aid for each professor to decide whether their use of copyright materials may fall under the fair use exemption are online at

<https://www.moravian.edu/sites/default/files/pdf/Fair%20Use%20Flow%20Chart.pdf>

As noted above, it is important to note that each case is viewed individually within the court system, and there is also variance in court decisions.

The best protection that each individual has in following copyright law is to document application of each of the four principles in the fair use guidelines and how it relates to your use of the materials.

## **VI. Photocopying Print Materials Allowed for Classroom Use**

The following instances of photocopying are allowed for classroom use under Section 107 of the Copyright Revision Bill.

One copy may be made for each student in the course for classroom use or discussion. The copy made must become the property of the student and students may not be assessed any fee beyond what is incurred to make the copies. Other stipulations for photocopying in the law are:

1. The copying adheres to the brevity standard of the law and is spontaneous

- *Poetry: A complete poem if less than 250 words if printed on not more than 2 pages OR an excerpt of not more than 250 words. This may be expanded to finish a line*
- *Prose: Complete story, article or essay if less than 250 words; OR an excerpt that is a minimum of 500 words and not more than 1,000 words or no more than 10% of the total piece, whichever is the lesser amount. This may be expanded to finish a paragraph*
- *Illustration: One chart, picture, diagram, cartoon, drawing or picture per book or per periodical issue*
- *"Special Works" A maximum of 2 pages or no more than 10% of a special work which combines illustrations and text and is no more than 2,500 words*
- *The copying is a spontaneous decision by the professor and is so close to the teaching moment that it is unreasonable to expect that permission may be sought prior to the class period*

- *The copying is done for one course and is not repeated from semester to semester*

2. The copying meets the cumulative effect test

- *Only one short poem, article, essay or story may be copied from the same author, and only 1-3 from the same collective work or periodical issue during one semester*
- *No more than 9 instances of copying may be done for any one course during a semester*
- *Copying is never allowed under law for a “consumable” work, e.g., from a lab manual or exercise book*
- *Copying may not be used to replace the purchase of a book or text by students*

3. Each copy made contains a copyright notice

Under section 106 of the Copyright Law, one copy may be made and put on library reserves for students. 3 copies may be put on library reserves of a phonorecord. All materials on library reserve must be owned by Reeves Library or the faculty member putting the material on reserve.

Materials copied in excess of the law noted above may still be used provided appropriate permission is sought by the professor to the copyright holder and/or fees to the copyright holder are paid. See Appendix 4 for permissions letter written by the Moravian College attorney in 2014 for this purpose.

## **VII. The Use of Media on Campus**

The use of media for distance education falls under the Digital Millennium Act of 1998. (*see Appendix 1*)

Current copyright law allows the following:

### **Films/DVDs/VHS**

- Films/dvds/VHS tapes may be shown in a classroom setting to the students enrolled in the course
- Films/dvds/VHS tapes may be placed on library reserve for students to view in the Library
- Films digitized to be streamed over the campus network must either
  - 1) be streamed from a vendor who has paid for educational licensing rights;
  - 2) the College must have paid for a license fee to stream the video over the campus network;
  - 3) The College must have received copyright permission to digitize and stream the complete film/dvd/vhs over the secure campus network; or,
  - 4) up to 10% of the film/dvd/vhs may be shown over the network without first paying a licensing or streaming fee
- All films/dvds/VHS digitized versions of the movie must be removed from the campus network at the end of the semester

The law expressly prohibits the presentation of an unlawfully made copy of a film

## Music

- An entire recording may be presented in a face-to-face teaching situation. In other instances, only a portion of the musical piece may be used in an online course or linked to a Canvas course account
- Copyright law protects live and recorded (analog and digital) audio performances and the rights to perform and/or record copyrighted works. Use of these works may require permission from the copyright holder, which may be the composer, the lyricist, and the performer. A statement of copyright and attribution of the source must be included with each use
- It is prohibited under current law to use campus resources to share or distribute audio material to others without first receiving copyright permission
- Copying or digitizing recordings is prohibited except when replacement copies cannot be obtained at a fair market price.

## Broadcast Programs

Broadcast programs (radio, television, Webcast) is subject to the following guidelines:

- Most broadcast programs may be kept for up to 45 days and then erased
- Recorded broadcasts may be used no more than twice within the first 10 days of the retention period. The second broadcast may only be used, as necessary, to reinforce the instructional point
- After the initial 10 days following the broadcast, the broadcast may only be viewed/listened to by the instructor for evaluation to determine if it should be added to the curriculum
- All copies of the broadcast recording must include the copyright notice as it was shown on the original
- The broadcast recordings may not be physically or electronically altered, nor may they be added to other recordings to create an anthology
- The time limitations, specified above, do not apply to hard news (local, regional or network broadcasts), interviews concerning these broadcasts, or on-the-spot coverage of news events
- Broadcast recordings may only be added to the College collection once appropriate permissions have been received from the copyright holder
- Premium pay services such as HBO, Cinemax and Disney, and cable-only services such as Lifetime, USA and MTV do not fall in the open broadcast category and cannot be taped.  
Images (Analog and Digital)
- No more than 5 images from one artist or photographer
- No more than 10% or 15 images, whichever is less, from a collection

**CANVAS: COURSE MANAGEMENT SYSTEM**

| <b>ITEM</b>   | <b>ALLOWED</b>  | <b>NOT ALLOWED</b>  |
|---|---|---|
| Article from a library database   | Direct linking to article allowed   | Copying and pasting the article into Canvas   |
| Article, book, book chapter, or DVD obtained through interlibrary loan or otherwise borrowed from another library | Permission must be obtained   | Permission denied or not obtained   |
| Scanned copyrighted image   | Must be educational in nature; display in Blackboard for one semester                             | Repeated use over multiple semesters  |
| Scanned chapter from a book   | 5% of the total work if in-print; 10% of the total work if out-of-print; allowed for one semester | More than the allotted percentages or repeated use over multiple semesters          |
| Scanned article from a journal, trade publication, or magazine  | A single article for one semester   | Multiple articles from the same publication or repeated use over multiple semesters |

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## **Appendix 1**

### **Digital Millennium Copyright Act 1998 (DMCA)**

In 1998, the U.S. Congress passed into law the Digital Millennium Copyright Act (DMCA). Under DMCA, Moravian College is considered an Online Service Provider (OSP) for its students, faculty and staff through Title II of the DMCA establishes certain requirements for Online Service Providers (OSP) concerning copyright infringement violations including:

1. registration of an agent with the U.S. Copyright Office;
2. development and posting of updated copyright policies;
3. adoption of "notice and takedown" procedures for alleged copyright infringing materials; and
4. accommodation and non-interference with standard technical measures utilized by copyright owners to identify and protect their works.

#### **1. DMCA and Online Service Provider**

DMCA requires the college to expeditiously respond to complaints it receives of copyright infringements. When notified, under penalty of perjury, by a copyright owner of infringing materials on a computer attached to the university network, the college will take immediate action to block network access to the computer and notify the owner of the computer. Network access will be restored after the infringing material is removed from the computer or within 14 days after receiving a proper counter-notification, unless the copyright owner files an action seeking a court order against the computer owner. A second violation may result in an extended loss of access privileges to the college network. MoCo will notify the infringing individual that the material has been removed. This action protects the College from liability to infringement claims. The DMCA states that the faculty member or student infringer is considered a person other than the provider. Additionally, as an OSP, MoCo may be served with a subpoena for the identity of the owner of a computer determined to contain infringing materials. MoCo will comply with the subpoena.

#### **2. DMCA and Peer-to-Peer (P2P)**

Probably the greatest cause of copyright infringements is the use of peer-to-peer (P2P) file sharing services, such as Morpheus, BitTorrent and Limewire, for sharing music and movies. Although the use of P2P file sharing is not illegal, its use to share copyright protected files is. Generally, the P2P file sharing programs install the software and automatically share downloaded files with other Internet users. Copyright owners and their agents use automated methods to actively scan the Internet to detect computers that are illegally sharing copyrighted files.

A statutory limitation to the Copyright Act of importance to nonprofit educational institutions is Section 107, the doctrine of "fair use". Under this doctrine, limited use of copyrighted material is allowed without prior permission of the copyright owner if certain criteria are met. Section 107 lists purposes for which the reproduction of a particular work may be considered "fair", and presents factors to be considered in determining whether or not a particular use is fair.



**Appendix 2**  
**2002 TEACH Act**

The TEACH Act requires that an institution meet the following requirements that then allow the use of copyright materials in a digital environment, including distance education and course management systems.

The Act requires that the following terms are met:

- \_\_\_\_\_ 1. The institution must be an accredited, non-profit educational institution
- \_\_\_\_\_ 2. The use must be part of the mediated instructional activities
- \_\_\_\_\_ 3. The use must be limited to a specific number of students enrolled in a specific class
- \_\_\_\_\_ 4. The use must either be for "live" or asynchronous
- \_\_\_\_\_ 5. The use must not include the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses
- \_\_\_\_\_ 6. Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used
- \_\_\_\_\_ 7. The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials
- \_\_\_\_\_ 8. The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut & paste disabling, etc.

It is important to keep in mind what the TEACH Act does not allow. The new exemptions under TEACH specifically *do not* extend to:

- Electronic reserves, course packs (electronic or paper) or interlibrary loan (ILL).
- Commercial document delivery.
- Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
- Conversion of 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.







It is also important to note that TEACH does not supersede fair use or existing digital license agreements.

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### Appendix 3 Creative Commons Licensing

Creative Commons Licensing is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools. Creative Commons gives one a standardized way to grant copyright permissions to use their works.

The following licenses are available for use and sharing through the Creative Commons. These licenses are listed from the most to least restrictive.

-  **1. Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)**  
This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.
-  **2. Attribution-NonCommercial (CC BY-NC)**  
This license lets others remix, retweak, and build upon your work non-commercially, and although their new works must acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms.
-  **3. Attribution-ShareAlike (CC BY-SA)**  
This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. This license is often compared to "copyleft" free and open source software licenses. All new works based on yours will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects.
-  **4. Attribution-NonCommercial-ShareAlike (CC BY-NC-SA)**  
This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms.
-  **5. Attribution-NoDerivs (CC BY-ND)**  
This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.
-  **6. Attribution (CC BY)**  
This license lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This is the most accommodating of licenses offered. Recommended for maximum dissemination and use of licensed materials

**Appendix 4**  
**Moravian College Copyright Permission Letter for Faculty**

**MORAVIAN COLLEGE STATIONERY**

[date]

Presumed Copyright Owner  
Copyright Owner Address  
Copyright Owner Address

**Re: Proposed Use of Copyrighted Material for Educational Purposes**

Ladies and Gentlemen:

I write to you on behalf of Moravian College, a non-profit, liberal arts college located in Bethlehem, Pennsylvania, established in 1742. More information about the college is available at: <http://www.moravian.edu/>

A professor at the College would like to use materials in which you may hold a copyright in connection with an upcoming class.

The pertinent information is:

Title and course number of class:

Professor:

Number of enrollees:

The title of the work:

Portion of the work to be distributed to students:

The College believes that its use of the copyrighted material is consistent with the fair use exception to the U.S. Copyright Law and, generally, the Agreement for Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with respect to books and periodicals as set forth in Circular 21 of the U.S. Copyright Office.

If you have an objection to the proposed use of copyrighted materials, if there is statement that you want placed on such materials, or if there is a standard charge for such use, please contact me at your earliest convenience. I remain,

Sincerely yours,  
Moravian College

By:  
Title: