

Section:	II.2.2	
Title:	Use of Copyrighted Materials (Interim)	
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Approved By:	President	
Responsible Unit:	Academic Affairs (609) 771-3032; academic@tcnj.edu	
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1.0	10/14/2019	New Policy; Initial Release

I. INTRODUCTION

Copyright is the legal framework for ownership of the intellectual property in works of authorship that include but are not limited to written works, creative work, paintings, sculptures, photographs, videos, recorded music, sheet music, computer programs, video games, architectural design, choreography, etc. Whether an individual is a creator or a user of copyrighted materials, it is important to understand the key legal concepts of copyright.

This policy concerning copyright and intellectual property is intended to promote compliance with applicable copyright laws while advancing The College of New Jersey's ("TCNJ" or the "College") mission to develop critical thinkers, responsible citizens, and lifelong learners and leaders. The College, its faculty, students and staff, may be both a creator and a user of protected intellectual property. The College seeks to support the responsible creation and exchange of intellectual property and to that end, works to raise awareness about issues of copyright, educating members of the community about principles of fair use and providing resources to advance teaching and research.

This Policy has been drafted with the intent to not be inconsistent with applicable provisions of copyright law and negotiated agreements involving a bargaining unit (e.g., between the State of New Jersey and the Council of New Jersey State College Locals, AFT, AFL-CIO, the "AFT Contract") and to the extent feasible, this Policy is to be interpreted consistent with applicable provisions of copyright law and negotiated agreements. In cases in which that is not feasible, the contradictory provisions of this Policy shall be deemed inapplicable to the extent required to remove the inconsistency and the applicable provisions of copyright law and negotiated agreements shall prevail in that order of precedence.

II. DEFINITIONS

“Copyright” is a legal term of art. The United States copyright law is contained in the United States Copyright Act¹. In general, copyright represents a legal right or bundle of rights in certain forms of creative work, including the right to: make copies, distribute copies, make derivative works (such as a translation or adaptation), and publicly perform and/or publicly display the work.

“Substantial College Resources” refers to the use of College funds, facilities, equipment or other resources not ordinarily available to all or most faculty members. Use of Substantial College Resources may include research funding, paid or release time awarded to support the creation of the copyrightable work, use of College laboratories or special instrumentation, and dedicated assistance by College employees, but would not include incidental use of College facilities or financial support.

III. POLICY

1. Copyright Requirements and Exclusive Rights

- a. Copyright protection in the United States requires that a work be original and be fixed in a tangible medium of expression (written, recorded, taped, drawn, etched, etc.) to acquire copyright protection. The Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:
 - i. Make reproductions of the work;
 - ii. Create derivative works, or adaptations, from the original work, such as for example translations, new versions, films from novels, songs from poems, and musical arrangements;
 - iii. Publicly distribute copies of the work by sale or other transfer of ownership, or by rental, lease, or lending;
 - iv. Publicly perform the work;
 - v. Publicly display the work; and,
 - vi. In the case of sound recordings, to publicly perform the work by means of digital audio transmission.

¹ Chapters 1 through 8 and 10 through 12 of title 17 of the United States Code. This policy addresses domestic copyright law. Additional copyright and intellectual property law and requirements may be applicable outside of the United States.

- b. Copyright law protects many of the types of works created and used at the College and at educational institutions generally, including:
 - i. Literary works, including compilations meeting minimal requirements for originality and creativity in selection and arrangement of content;
 - ii. Musical works, including any accompanying words;
 - iii. Dramatic works, including any accompanying music;
 - iv. Pantomimes and choreographic works,
 - v. Pictorial, graphic, and sculptural works,
 - vi. Motion pictures and other audiovisual works,
 - vii. Sound recordings, and,
 - viii. Architectural works (both architectural plans and physical constructions).

2. Copyright Ownership

- a. In cases in which the AFT Contract or contract between a faculty member and the College so provides, faculty members may hold the copyright in the scholarly and artistic works they create, such as books, monographs, journal articles, musical compositions, and artwork, in whatever format they are created, print or electronic. In those cases, faculty also generally own copyright to pedagogical materials that they develop in the regular course of their teaching duties using resources ordinarily available to all or most faculty members.
- b. Students generally own the copyright to works they create as a requirement of their coursework, degree, or certificate program.² The College, however, retains the right to use student works for pedagogical, scholarly, and administrative purposes.
- c. The College generally owns copyright in the following situations³:
 - i. Works created at the College's direction;
 - ii. Works created by staff within the scope of their employment;
 - iii. Works created by students in their capacity as employees of the College;

² Exceptions or conditions may apply to works that are subject to agreements that assign rights to third parties (e.g., a class project for an outside vendor or not-for-profit entity or a business competition project for the benefit of an entity created by the student team members).

³ Subject to applicable explicit exceptions, restrictions, conditions, qualifications and the like that may be provided in the then current AFT Contract or authorized written agreement between a faculty member and the College that provides otherwise (e.g., special provisions relating to works produced by faculty while on sabbatical with no more than incidental use of College facilities).

- iv. Works created as a result of external funding where the terms of the funding require that copyright be in the name of the College⁴;
 - v. Works created using Substantial College Resources; and
 - vi. Works created to support the functions of the College by outside entities or individuals (who are not regular employees of the College) that have been assigned to the College by means of a written agreement.⁵
- d. The College may also hold sole or shared intellectual property rights in the following nonexclusive situations:
- i. Copyrightable works that incorporate subject matter that qualifies for protection under patent laws as an invention or discovery⁶; and
 - ii. Works created collaboratively by students, staff, faculty, and/or others if they fall within one of the categories described in section III.2.c. above⁷.

3. Limitations and exceptions

- a. Limitations and exceptions in copyright law provide for a balance between the rights granted to creators and copyright holders of works and others who wish to use those works. A number of limitations and exceptions in copyright law enable uses of copyrighted works without prior permission of or payment of a royalty to the copyright holder. They include, but are not limited to, these exceptions that are relevant to educational institutions and libraries:
- i. “Fair use”;
 - ii. Limited rights for libraries and archives to reproduce and distribute works;
 - iii. Face to face classroom teaching exception;
 - iv. Virtual classroom exception (“TEACH Act”); and
 - v. Reproduction for blind or other people with disabilities.

⁴ Alternatively, the terms might require that the external funder or some other third party own the copyright.

⁵ Consultants or contractors may be required to execute an agreement that includes the required assignment to the College prior to the work being performed.

⁶ Unless the College explicitly elects to not file a patent application or otherwise commercialize information that has been disclosed to it, or the College assigns its rights in the invention or discovery to the individual creator.

⁷ When works are created collaboratively with other entities or institutions, the College interests and rights in such works shall be recognized and protected consistent with this policy.

4. Fair Use

- a. “Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances.”⁸ Four factors must be considered when determining whether a use of copyrighted material is “fair use”:
 - i. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
 - ii. The nature of the copyrighted work;
 - iii. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - iv. The effect of the use upon the potential market for, or value of, the copyrighted work.
- b. Students, faculty, and staff are permitted to use copyrighted works if it is clear that the use meets the requirements of the fair use. Faculty, staff and students with questions about fair use should respectively consult with their department chair or dean, applicable instructor or supervisor.
- c. Where use of a copyrighted work exceeds the parameters of a fair use and no other copyright exception applies to the use (see Section III. 5. for another possible exception), or if a publisher insists on a user obtaining written permissions as a condition for publication, or if any contract or license associated with the copyrighted work requires that permission be obtained, College students, faculty, or staff must obtain permissions from the applicable copyright holders prior to the use of the work.

5. Teach Act

- a. The Technology, Education, and Copyright Harmonization (“TEACH”) Act, is a 2002 amendment to the U.S. Copyright Act that affords accredited, non-profit educational institutions (such as the College) that comply with its requirements certain additional rights with respect to use of copyrighted works in online environments.
- b. Certain copyright materials may be used in electronic formats without having to obtain permission from the copyright holder. In order to qualify to use copyrighted materials (without the permission of the copyright owner) under the TEACH Act, several conditions must be satisfied.

⁸ U.S. Copyright Office. See: <https://www.copyright.gov/fair-use/more-info.html>.

c. Faculty Responsibilities

- i. Provide the material as part of mediated instructional activities at the direction of or under the supervision of an instructor and must be an integral part of the course curriculum (i.e., not merely entertainment or unrelated background material);
- ii. Ensure that use is limited to a specific number of students enrolled in a specific class;
- iii. Provide only an amount of material that is comparable to that typically displayed in a live classroom session.⁹; and
- iv. Provide notice to students that materials distributed in the course may be subject to copyright protection.

d. Technology Requirements

- i. To the extent technologically feasible, the transmission of material is limited to students enrolled in the course (through password-restricted access or other similar measures); and/or,
- ii. Apply technological controls so that the material is available to students for a limited duration no longer than the “class session” (i.e., the period during which a student is logged on to the server). Students may not be permitted to retain a permanent copy of the material or to further disseminate it.

e. Institutional Requirements

- i. Institute policies regarding copyright; and,
- ii. Provide information to faculty, staff, and students that accurately describes and promotes compliance with copyright laws.

f. Exclusions

- i. The TEACH Act does not authorize the use of textbook materials or materials “typically purchased or acquired by students”¹⁰ or works produced or marketed primarily as eLearning or distance learning materials, or the use of materials that the institution knew or had reason to know were unlawfully made and acquired.

6. Academic Integrity

⁹ For certain works, the display of the entire work could be consistent with displays typically made in a live classroom setting (e.g., short poems or essays, or photographic images). Distribution of entire textbooks or supplemental readings would not be authorized under the TEACH Act.

¹⁰ Examples of such would include “course packs” and “case studies,” which generally require a license or permission from the copyright holder.

- a. The obligation to comply with this policy is separate and distinct from (and not in lieu of) the obligation to comply with applicable policies on academic integrity and other applicable standards and requirements (e.g., proper citation).

7. Resources and Violations of this Policy

- a. Faculty, students, and staff with questions regarding copyright and the potential use of copyrighted material should respectively contact their department chair or dean, applicable instructor or supervisor, who can consult with the Library or Office of General Counsel for guidance as appropriate.
- b. Failure to comply with this Policy and applicable copyright law may result in disciplinary action and, in the case of copyright law, personal liability (including significant monetary penalties).
- c. Faculty and staff shall promptly notify the Office of General Counsel upon: (i) receiving a notice or claim of copyright infringement related to their use of copyrighted materials in the course and scope of their employment at the College or (ii) learning of possible infringement of a College copyright.