

COPYRIGHT AND USING E-RESOURCES

You have one free hour. You need to use a database. And the unthinkable happens. Access Denied!

You may have had this experience when a database, electronic book, or electronic journal has been "shut off" due to violations of the library's license with the database vendor.

Access to these electronic resources is governed by copyright laws and licensing agreements. The library is responsible for negotiating licensing agreements with various publishers/vendors and must obey the copyright laws.

You, as the user of the College's computer resources and College-wide data, have an obligation to abide by these licensing agreements and copyright laws. Please refer also to the College's Information Services Acceptable Use Policy, including the section entitled "File-Sharing/Peer-to-Peer (P2P) Usage" stating risks of copyright violations resulting from use of P2P programs and the College's policy prohibiting use of such programs; this Policy can be found at https://intranet.mcphs.edu/is/policies/MCPHS_Acceptable_Use_Policy.pdf

Printing or downloading electronic information are both "making a copy" of the information.

The Copyright Law of the United States (Title 17 U.S. Code) and regulations issued by the Copyright Office govern the copying of copyright materials, including electronic information products and software. Copyright owners have the rights to make copies of their work and distribute it; display or perform the work publicly, and create derivative works. This law is difficult to interpret, and many disputes are only resolved in the courts. To encourage scholarship and the development of new concepts and ideas, limited use of copyrighted materials is permitted under the law. In academic settings, these exceptions to the copyright owners' exclusive rights in their works come under the following categories:

These five exceptions are described below. *Note that there is no general exception for academic uses; academic journals and text publishers expect royalties for use of their content.*

- Fair use;
- the face to face teaching exception;
- the distance-learning exception (TEACH Act);
- the first sale doctrine; and
- the library and archives exception.

Unless an exception to the copyright owner's exclusive rights applies, permission must be obtained from the copyright owner to copy, distribute, display or perform a copyrighted work in any medium for any purpose.

A copyright interest attaches to an original work that is "fixed in any tangible medium of expression" (i.e., a medium that is captured in an accessible form of content) at the work's

creation. Copyright registration is not required to obtain a copyright, though registration may be required to enforce a copyright in federal courts. Works published after 1989 also do not need to have a copyright notice (i.e., © Massachusetts College of Pharmacy and Health Sciences 2012) to enjoy copyright protection. So if in doubt, assume copyright applies.

The penalties for copyright infringement can be harsh. Under the Copyright laws, a court may award up to \$150,000 in civil statutory damages for each separate willful infringement; copyright infringement can also be a crime under federal law. Under College policies, violation of copyright law may result in administrative action, such as loss of networking privileges or disciplinary action up to and including termination of employment or student status.

Not all works enjoy copyright protection, and all works eventually fall into the public domain. Once a work is in the public domain it may be freely used without restriction (unless accepting access to a work was done under a license, in which case the terms of the license will control). The College encourages the use of Public Domain materials, which are widely available on the Internet. See, e.g., Project Gutenberg, http://www.gutenberg.org/wiki/Main_Page, Google Books, <http://books.google.com>.

FAIR USE.

According to Title 17 U.S. Code ch. 1 §107 of the Copyright Laws of the United States, four factors are considered when determining whether or not a particular use is fair:

- the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Each of these factors must be considered when analyzing whether a proposed use may be accomplished without seeking permission from the copyright owner before making an overall determination. There is no one standard, so the analysis is necessarily subjective and it can be difficult to produce a definitive determination. All of the following should be taken into consideration:

1. Educational, non-profit and personal use is favored over commercial applications. The character of the use is shown by whether it merely reproduces the original work or whether it is employed to criticize, comment or parody or otherwise add something new to the original work.

2. The nature of the work depends on whether it is factual, which tends to favor fair use, or more original or imaginative, which is more likely to require permission.

3. With regard to the third point, the “amount and substantiality of the portion used in relation to the copyrighted work as a whole”: There is no specific number of words, lines, or notes that may safely be taken without permission. License agreements with database producers

commonly include language that states the user may copy or download limited, reasonable, or discrete portions of information. This fairly vague terminology gives both institutions and vendors/publishers a little leeway to use their best judgment.

4. The final factor weighs the effect of the proposed use on the work's value. Does the proposed use serve as a market replacement for the original? Is there potential market harm beyond direct substitution, such as the potential market for licensing? This has come into play as part of the legal controversy regarding copy shops making paper course packs for students and the effect it has had on the market for licensing of course pack copies; the general consensus is that the negative impact on the licensing market tips the balance against fair use.

Any fair use analysis leaves a lot of room for interpretation. However, there are a few guidelines that can be followed to help prevent copyright/license infringement:

Limit copies to:

- A SINGLE CHAPTER or MONOGRAPH in a book or database (e.g.: Natural Medicines, Clinical Pharmacology, MICROMEDEX). You may NOT download several monographs or a significant amount of a database.
- One or two ARTICLES from a single journal. You may NOT copy every article in a journal!
- One chart, graph, illustration from a book, journal, or database.
- For electronically posted excerpts, no more than one chapter (for books with ten or more chapters) or 10% of a given book (for books with no chapters or fewer than 10 chapters).

If you think you need to copy or download more than what the above guidelines say, please see a librarian.

Also keep in mind that acknowledging the source of the copyrighted material does not substitute for obtaining permission.

FACE TO FACE TEACHING EXCEPTION.

This applies to in-class activities where all or a portion of a copyright work is performed or displayed. It does not include copying or distribution of the work, only the display or performance of it during class time as part of the teacher's lecture or seminar. It must be directly related to the leading content and does not cover material that does not relate to the subject matter.

THE FIRST SALE DOCTRINE.

Under U.S. copyright law, the owner of a copyrighted work has the right to dispose of that work as he or she sees fit, without the permission of the copyright owner and without violating the copyright owner's distribution rights. Thus, a student or professor may lend, resell or give away his or her copy of a book, CD or DVD. However, this right does not necessarily apply to digital copies of music, software or other content, because of the ease and availability of disseminating such content. The Copyright Office has taken the position that the first sale doctrine should not apply to digital copies, and there are a number of cases that are currently addressing the matter in

a variety of formats. In the meantime, providing a link to a copyright owner's website is permitted and is the recommended practice.

DISTANCE EDUCATION.

The TEACH Act extends in a limited way the Face-to-Face Teaching exception to mediated distance, i.e., online or electronic media, learning courses. Under the TEACH Act, which is fairly narrow, transmissions of performances of entire non-dramatic works and reasonable and limited portions of any other performance or audiovisual work may be made without obtaining permission from the copyright owner. The following strict requirements must be observed in order to comply with the Act:

1. The performance or display must be: a regular part of mediated instructional activity; made by, at the direction of, or under the supervision of the instructor; and directly related and of material assistance to the content of the course.

2. The following additional restrictions must be in effect: the content must be accessible only to those students who are enrolled in the course; the content must be accessible only for the duration of a class session; to the extent technologically possible, the content must be protected from further distribution ("downstream-controlled") and the content must not be subject to retention by students.

3. All material displayed under the TEACH Act must contain the following notice: The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. The materials on this course website may be protected by copyright; any further use of this material may be in violation of federal copyright law.

THE LIBRARY AND ARCHIVES EXCEPTION.

Under Section 108 of the Copyright Act, libraries and archives may make reproductions without seeking permission from the copyright owner. In order to qualify for this exception, the library or archive must:

- Produce no more than one copy of a given work;
- Derive no commercial gain from the reproduction;
- Be available to the public or to researchers using the specialized area in the library collection; and
- Include a copyright notice or other indication that the work may be protected under copyright law.

Furthermore, reproduction under this exception is generally limited to requests for articles and short excerpts, archival reproduction of unpublished works, and replacement of lost, damaged or obsolete copies.

More Information About Copyright.

Fair Use Information from the U.S. Code

<http://www.copyright.gov/title17/92chap1.html#107>

<http://www.copyright.gov/fls/fl102.html>

MCPHS Copyright Information Subject Guide

[U.S. Copyright Office](#)

Copyright Clearance Center (<http://www.copyright.com>)

[MCPHS Information Services Acceptable Use Policy](#) [Attach Link]

Or contact:

Joanne Doucette, Copyright Clearance Services, 617.732.2805

We thank you very much for your attention to this topic and your adherence to the Copyright Law.

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