

COPYRIGHT/FILE SHARING

The purpose of the College copyright information is to provide educational information that communicates the Copyright Act to students and employees of Central Alabama Community College. Although every effort has been made to provide accurate information, this information is not intended to provide legal advice about copyright.

According to the U.S. Copyright Office, copyright "is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of 'original works of authorship,' including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works." For more details, see the website of the U.S. Copyright Office at www.copyright.gov.

In general, Section 106 of the Copyright Act of 1976 gives the copyright owner exclusive rights to the following, allowing him or her to authorize others likewise: to reproduce the works in copies or photorecords, to prepare derivative works based upon the work, to distribute copies or photorecords of the work to the public by sale or transfer of ownership, or by rental, lease, or lending, to perform the work publicly, in the case of literary, musical dramatic, and choreographic works, pantomimes, and motion pictures, and other audiovisuals, and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

Authors of visual art also have the rights of attribution and integrity, as described in Section 106A of the Copyright Act of 1976. Additional information regarding the registration of works of visual arts can be found in Circular 40, "Copyright Regulation for Works of the Visual Arts," prepared by the U.S. Copyright Office.

While *it is illegal for anyone to violate any of the rights established for copyright owners*, there are limitations or exceptions to these rights. Of particular interest to educators and students are four exceptions under certain conditions: works in the public domain, "Fair Use," the Digital Millennium Copyright Act (DMCA), and the "TEACH Act."

Public Domain

Copyrighted works may eventually fall into the "public domain" and, at that point, may be freely used without permission. In general, such works include those for which the copyright has expired or has been lost, works produced by the federal government, and works that lack sufficient originality to qualify for copyright protection (e.g., standard calendars, charts, rulers, etc.).

Fair Use

The "Fair Use" doctrine allows educators and students to use copyrighted materials without seeking prior approval to certain types of resources under certain conditions. The fact alone that the intended use is educational does not remove restrictions; the "four fair use factors" must be considered in total:

- I. The purpose and character of the use, including whether the use is of a 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.

"Fair Use" analysis is based on reasonable efforts by reasonable individuals and, as a result, is sometimes subjective. Educators enjoy some protection from infringement lawsuits because of Section 504(c) (2) of the Copyright Act. This protection is called "the good faith fair use defense" and is based on "a reasonable, good faith determination" by educational employees that their use of copyrighted materials falls under the exceptions for "fair use": *i.e., employees, acting within the scope of their employment, who make a reasonable, good faith decisions that their use of copyrighted materials falls under the "Fair Use" doctrine, are protected from statutory damages in court cases that find copyright infringements have occurred if they believe and have reasonable grounds for believing that their use was fair.*

Central Alabama Community College students are expected to act responsibly and legally by applying "Fair Use" principles to the completion of their activities and projects. The College does not assume legal responsibility for violations of applicable copyright law. Student employees are subject to all college policies relating to faculty and staff.

Digital Millennium Copyright Act (DMCA)

In 1998, Congress revised copyright provisions to meet the demands of the digital age and to offer certain protections to educational entities that offer online resources, thus qualifying as Online Service Providers (OSPs). More specifically, the DMCA:

- Prohibits the "circumvention" of "technological protection measures" (e.g., password or form of encryption) used by a copyright holder to restrict access to its material;
- Prohibits the manufacture or offering of any device or service designed to defeat such protective measures;
- Makes no change to the "Fair Use" doctrine and expressly states that valuable activities based on the "Fair Use" doctrine (e.g., reverse engineering, security testing, privacy protection, and encryption research) do not constitute illegal "anti-circumvention";
- Exempts any OSP or carrier of digital information (including libraries) from copyright liability because of the content of a transmission made by a user of the provider's or carrier's system (e.g., the user of a library system or College network)
- Establishes a mechanism for a provider to avoid copyright infringement liability due to the storage of infringing information on an OSP's own computer system, or the use of "information location tools" and hyperlinks, if the provider acts "expeditiously to remove or disable access to" infringing material identified in a formal notice by the copyright holder.

Title 17 of the U.S. Code and more recently the Digital Millennium Copyright Act, 105 PL 304 also outline that it is illegal to distribute copyrighted music in any form, including digital mp3 files, without a license to do so from the copyright holder. It is a violation of College policies to use the campus network for illegal activities or in a manner that consumes capacity and services needed for instruction, research, and other core purposes. The *individual* using electronic resources (e.g., computers, campus network,

Internet access, etc.) is responsible for adhering to all college policies and guidelines as well as all copyright and legal restrictions.

Central Alabama Community College has appointed Denita Pasley as the College Copyright Agent to receive notification of claimed infringement from a copyright owner as required by the Digital Millennium Copyright Act.

The 2002 Teach Act

The 2002 Technology, Education and Copyright Harmonization (TEACH) Act updates U.S. Copyright law to extend privileges for legally using copyrighted materials with distance education technology and clarifies terms and conditions under which educational institutions can use copyrighted materials in an online educational format without permission from the copyright owner.

TEACH allows instructors and students at an accredited, nonprofit educational institution to transmit performances and displays of copyrighted works as part of a course if certain conditions are met. If these conditions are not or cannot be met, use of the material must qualify as fair use or permission from the copyright holder(s) must be obtained. The provisions of the TEACH Act require certain administrative and technological restrictions on the distribution of copyrighted materials as well as education of instructors and students in copyright requirements.

Some of the key elements of the TEACH Act include:

- I. Limit access to copyrighted works to only those students currently enrolled in the class;
- II. Limit access for the time needed to complete the class session or course;
- III. Inform instructors, students, and staff of copyright laws and policies;
- IV. Prevent further copying or redistribution of copyrighted works;
- V. Do not interfere with copy protection mechanisms;
- VI. Apply "Fair Use" doctrine to print and digital environments;
- VII. Apply "Fair Use" doctrine even when there are no established guidelines for particular uses of copyrighted materials.

Summary of Penalties for Copyright Violation

Students and employees should be aware that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject them to civil and criminal liabilities.

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under Section 106 of the Copyright Act (Title 17 of the U.S. Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a

court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

In addition, students found to be in violation of copyright laws will be disciplined in accordance with the College Student Code of Conduct found in the College catalog. Employees found to be in violation of copyright laws will be disciplined in accordance with the College Personnel Handbook.

Legal Alternatives to Illegal Downloading

The College recommends students and employees utilize the information provided by *Educause* at their Legal Source of Online Content site at www.educause.edu/legalcontent to determine legal alternatives to illegal downloading or otherwise acquiring copyrighted material. The site is a regularly maintained and updated list of legal content sources for use by students and employees. Any questions about this information should be directed to the College's Copyright Agent.

Copyright and College Web Pages

Web pages hosted by Central Alabama Community College are subject to all copyright policies. Any individual who wishes to post copyrighted materials on his/her web page or a College webpage is advised to secure, in advance, in writing, permission of the copyright holder and provide a copy of that documentation to the College's Copyright Agent. Anyone who posts copyrighted materials on his/her web page or a College web page without first securing and providing proof of permission from the copyright holder is individually liable for copyright infractions.

Copyright and Distance Education

Faculty and staff are encouraged to secure copyright permission, a license, or a legal basis for use of someone else's intellectual property without permission before using the material. Instructors involved in distance education may use copyrighted materials that meet the following as prescribed by the TEACH Act:

- I. Avoid use of commercial works that are sold or licensed for purposes of digital distance education;
- II. Avoid use of pirated works or works where it is otherwise known that the copy was not lawfully made;
- III. Limit use of works to an amount and duration comparable to what would be displayed or performed in a live physical classroom setting;
For example, TEACH does not authorize the digital transmission of textbooks or coursepacks to students.
- IV. Supervise the digital performance or display, make it an integral part of a class session, and make it part of a systematic mediated instructional activity.
For example, instructors should interactively use the copyrighted work as part of a class assignment in the distance education course. The copyrighted work should not be an entertainment add-on or passive background/optional reading. Enrolled students may post to distance education class pages as long as there is actual supervision by the instructor. Actual supervision does not require prior approval for posting nor does it require real-time or constant presence of the instructor.

- V. Access to software tools provided by the College limits use to the students enrolled in the course, prevents downstream copying by those students, and prevents these students from retaining the works for longer than a “class session.”
- VI. Notify students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder through the posting of the message below on all distance education class sites:
The materials on this course web site are only for the use of students enrolled in this course for the purposes associated with this course and may not be retained or further disseminated.

Student Works and Copyright

Faculty members should be aware that students own the copyright to their work, including papers and assignments they have completed; therefore student works are protected by copyright regulations. Faculty should have written permission from the student copyright holder to use their works. Any student work that is to be placed on reserve must be accompanied by the written and signed permission of the student to do so (specifying name, contact information, title of item[s], statement giving permission, and dates included). However, materials used on any of the College course web sites or notes obtained from an instructor are only for the use of students enrolled in Central Alabama Community College for the purposes associated with the course and may not be retained, disseminated, or sold without permission of the Dean of Instruction/Designee.

Plans to Effectively Combat Copyright Violations

Central Alabama Community College utilizes the following strategies to effectively combat copyright violations:

- I. Uses the services of the Alabama Supercomputer Authority to deter peer to peer copyright infringement. The Supercomputer Authority provides content filtering services to prevent peer to peer connections as well as proxy connections to bypass such filters.
- II. Informs students and employees through annual notifications as well as information and resources on the College website, College Catalog, and College Employee Handbook.
- III. Reviews on a periodic basis of the College’s policies and practices by the College Copyright Agent who monitors and examines any violations in order to improve College policies or practices.