

## USE OF COPYRIGHTED MATERIALS

### **I. Purpose**

This policy is designed to ensure all Western Dakota Technical College (WDTC) faculty, staff, and students have access to consistent information on copyright in accordance with federal law.

### **II. General Statement of Policy**

WDTC is committed to supporting teaching, research, learning and nonacademic operations in the advancement of the College's educational mission. Intellectual, technological, and information resources and materials are provided for use by the entire College community and are to be used in accordance with the provisions of the United States Copyright Act of 1976 as amended, the Digital Millennium Copyright Act of 1998, and the Technology, Education and Copyright Harmonization Act of 2002, unless licenses or agreements exist which allow for exceptions. All users of such resources and materials are expected to follow the standards outlined in the College's copyright policy.

It is the policy of WDTC to comply with the United States Copyright Act of 1976 as amended, the Digital Millennium Copyright Act of 1998, and the Technology, Education and Copyright Harmonization Act of 2002. All reproduction or use of copyrighted materials must comply with the provisions of the law. This includes following the guidelines provided related to items in all media, such as written works, musical works, dramatic works, pictorial and graphic works, sculptural works, motion picture, television, and other audiovisual works, sound recordings, multimedia works, and digital and computer works and programs.

The College prohibits the duplication, distribution, or use of materials by faculty, students, or other employees of any copyrighted material not covered by fair use or the Technology, Education and Copyright Harmonization Act of 2002, specific exemptions in the copyright law or licenses and agreements, or written permissions from copyright holders.

All members of the College community – employees and students – are expected to adhere to the limits for copying and the use of materials in presentations in a manner permissible under the fair use doctrine and guidelines, including those specifically granted to educators in classroom settings.

In accordance with the law, violations of this policy may subject the violating party to civil remedies and criminal penalties as defined in the U.S. Copyright Act. Under the law, both individuals and WDTC are liable for copyright infringement. Individuals who disregard copyright law put themselves legally and financially at risk. Any member of the College community found to violate this policy will be subject to disciplinary proceedings and sanctions. For employees, the sanctions could include suspension or termination, with or without pay, depending on the severity of the violation and whether multiple violations have occurred. For students, a first offense will result in a notice to cease illegal activity. Failure to comply or additional incidents may result in a Student Code of Conduct violation. Sanctions could include suspension of network access, short-term or long-term suspensions, or expulsion. Investigations of violations will adhere to processes described in employee work agreements, WDTC policies, or the Student Handbook.

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 United States 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. For more information, please see the website of the U.S. Copyright Office at <https://www.copyright.gov/>.

### **Peer-to-Peer File Sharing**

Campus computer networks are often used to reproduce and distribute copyrighted music, movies, television shows, pictures, and software through the use of peer-to-peer (P2P) networks. P2P file sharing applications allow a computer to connect to a P2P network, and once connected, make it possible to download and share files with other users on the network. There has been increasing pressure on universities to take action against copyright violations, especially those attributable to P2P. When WDTC receives a complaint from a copyright holder, WDTC notifies the individual involved and will pass along any information received from the copyright holder to that individual. WDTC does not supply any information to the copyright holder about the individual involved unless a valid subpoena is presented.

Any of the following activities done through P2P networks, if done without permission of the copyright owner, are probable violations of copyright law:

- Copying and sharing images, music, movies, television shows or other copyrighted material through the use of P2P technology
- Purchasing a CD or DVD and then making copies for others
- Posting or plagiarizing copyrighted material on your personal web space
- Downloading anything of which you do not already own a copy (software, MP3s, movies, television shows, etc.)

### **Digital Millennium Copyright Act**

The Digital Millennium Copyright Act (DMCA) was passed in 1998 in part as a response to international concern for copyright protection, in order to provide limited protections for Internet Service Providers (ISPs) and to address other related issues. For the purposes of this act, WDTC is considered an ISP and adheres to the procedures outlined in the DMCA for responding to reports alleging copyright infringements on WDTC's computers and networks.

- The College has designated the VP for Teaching and Learning as the agent to receive complaints about alleged copyright infringements on WDTC's computers and networks.
- Upon receiving proper notification, as defined by the DMCA, of a potential infringing activity, the College will where possible remove or block access to the material in question, and reports of repeated copyright infringements will lead to termination of computer/network services and/or other College/legal actions for the individual(s) responsible for the violation.
- The College provides copyright policy information as part of its computer and network use policy.

The DMCA requires that the College take timely action when presented with a notice that conforms to the requirements of the DMCA alleging copyright infringement on our computers or networks.

### **Technology, Education, and Copyright Harmonization Act**

The Technology, Education and Copyright Harmonization Act (TEACH Act) was passed into law in November 2002. The TEACH Act allows faculty to use copyrighted works in digital teaching materials both for students enrolled in traditional classroom settings as well as for distance learning courses. In order to use materials that qualify under the TEACH Act, the following conditions must be satisfied:

- The material must be provided at the direction of or under the supervision of a faculty member and must be an integral part of the curriculum.

- The amount of material provided must be comparable to that allowed under the fair use doctrine for live classroom session (e.g., short poems or essays, or photographic images).
- Notice must be provided to students that the use of materials may be subject to copyright protection.
- The materials available to students can only be available for a “limited duration” (no longer than a class session as defined by the TEACH Act).

The TEACH Act does not apply to the following:

- The use of works specifically created for use as distance learning products.
- The use of works that you know or have reason to believe are not lawfully made (i.e. copyrighted films and music downloaded from the Internet).
- The conversion of print or other analog versions of works into digital formats unless no digital version of the work is available.

### **Fair Use Guidelines of Copyrighted Materials**

Fair use is a legal principle that provides certain limitations on the exclusive rights of copyright holders. The Copyright Act of 1976 recognizes the need for educators, scholars, and students to use copyrighted materials without permission from the copyright holder. This provision is called fair use. Specifically, fair use doctrine offers a means of balancing the exclusive right of the copyright holder with the public’s interest in dissemination of information affecting areas of universal concern, such as art, science, history, or industry.

The fair use provision of the Copyright Act allows reproduction and other uses of copyrighted works under certain conditions for purposes such as criticism, comment, news reports, teaching, scholarship, and/or research. The guidelines that follow provide principles for all members of the College community who wish to use and/or digitize copyrighted works under fair use rather than by seeking authorization from the copyright owners for non-commercial educational purposes.

The key determiner of fair use is the amount of a selected work that is disseminated without permission from the copyright holder. In determining whether the use is within the fair use doctrine, the following four factors must be considered:

- The purpose and character of the use, including whether such use is of a 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 copyright work as a whole

- The effect of the use upon the potential market for or value of the copyrighted work

Essentially, fair use is allowed as long as the use does not affect the economic viability of the materials. Economic viability is affected if the use in question captures the “essence” of the copyrighted work. Faculty who follow these guidelines should be covered by the fair use provision of the Act. However, fair use cannot be solely determined by resort to arbitrary rules or fixed criteria and requires examination of circumstances in each case.

Fair use applies to printed and electronically stored copyrighted works. A statement of the copyright along with clear attribution must be included with each permitted use.

### **Examples of Uses Permitted**

Copying, with clear attribution, is generally permitted in the following instances:

- Quoting brief passages from copyrighted works
- Copying materials for archival purposes
- Copying excerpts from texts which are sold to students for a per-page cost; extensive copying is prohibited
- Making single copies of articles from a periodical, book chapters, short stories, charts, graphs, illustration or other material for instructional preparation
- Making multiple copies for classroom use as long as:
  - The copies are brief (poems, fewer than 200 words; articles, fewer than 2,500 words; prose excerpts not to exceed 1,000 words or 10% of the work, stories or essays, whichever is less; a graph or illustration).
  - The copying is spontaneous (one-time use to maximize teaching effectiveness).
  - There is no cumulative effect (only used for one course, only one work from an author or instances of multiple copying for one course).
- Sheet music may be copied as long as it does not exceed 10% of the work and does not permit a performable unit. Works may be edited or otherwise changed as long as the overall character of the music is maintained.
- Material from the web – such as text, sound, video, etc. – may be incorporated into a website only if it is labeled freely reproducible and not under copyright. Many government materials are generally included in this category. It is usually permissible to include links to existing websites on a site you have created.

## **Examples of Uses Not Permitted**

Copying is not permitted in the following instances:

- Copying that exceeds the limits defined in “Examples of Uses Permitted” above
- Replacing published anthologies with copied materials
- Copying “consumable” works (such as a workbook)
- Copying in lieu of purchase
- Copying the same material for successive semesters
- Charging for copying beyond the actual cost of reproduction
- Incorporating copyrighted material – such as text, sound, images, video, etc. - into a website without permission from the publisher or originator.  
Exception: limited-access websites created by faculty and students. Faculty and students may include limited amounts of copyrighted material on their course sites as long as the site is password protected and they have followed fair use and TEACH Act guidelines

## **Duplicating**

Copying, displaying, and distributing copyrighted works, may infringe the owner's copyright. WDTC's Use of Copyrighted Materials Policy can help you determine whether your use of a copyrighted work is a fair use or requires permission. Any use of computer or duplicating facilities by students or employees for infringing use of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.

## **Public Notification**

All College offices are responsible for posting notices about copyright compliance at or near all computer rooms and photocopying sites, such as departmental copy rooms, and the Library.

## **Seeking Copyright Permission**

For use of copyrighted material that goes beyond fair use, an individual must obtain written permission from the copyright owner to copy the work. WDTC's Director of Instructional Support and Professional Development maintains all licensing agreements for the College. WDTC participates in contractual arrangements mandating royalty payments or licensing fees to copyright owners whenever feasible. Work with the WDTC Director of Instructional Support and Professional Development for assistance obtaining copyright permission.

Permanent records of permissions sought, denied, or granted must be submitted to the Director of Instructional Support and Professional Development and will be maintained

in the office of the VP for Teaching and Learning to defend against claims of infringement.

For more information and samples of permission letters, see the [U.S. Copyright Office](#).

### **Copyright and College Computer Resources**

Campus computer resources and facilities may not be used to duplicate, share, or distribute any copyrighted material without the permission of the copyright holder (with the exception of instances that fall within the fair use or TEACH Act guidelines or the WDTC computer software guidelines).

Examples of copyrighted material include text, images, music, movies, CD's, and DVD's. Further examples of prohibited activities include, but are not limited to, the following:

- Using peer-to-peer file-sharing programs (e.g., KaZaA) to retrieve or distribute copyrighted music, movies, software or other files over the Internet without the permission of the copyright holder.
- Making copyrighted material available on an unrestricted website without the permission of the copyright holder. This includes copying material from another website and putting it on your own without the permission of the copyright holder.

### **General Guidelines for Duplication and Use**

#### **Unpublished Works**

Original unpublished work in any medium is assumed to be copyright protected upon creation and does not need to contain a copyright notice. All unpublished works are subject to the same general copyright guidelines stipulated throughout this document.

#### **Published Works**

Sections 107 and 108 of the U. S. Copyright Law govern photocopying and other forms of reproduction of copyrighted materials. Section 107, the fair use clause, allows general photocopying under a specified set of conditions. Section 108 grants additional specific rights to libraries and archives in an attempt to balance the rights of creators and the needs of users. Other sections of the law also apply in specific situations. All electronic documents are subject to the same general copyright guidelines stipulated throughout this document.

## **Works under Public Domain**

Any clearly uncopyrighted works and all works that are in the public domain may freely be photocopied or reproduced without permission. The timeline for copyright protections for works in the public domain can be found at [www.copyright.gov](http://www.copyright.gov).

## **Specific Media**

The following information provides guidance on specific media affected by copyright law.

### *Print (Paper and Electronic)*

The applicable guidelines are under General Guidelines for Duplication and Use and Fair Use Guidelines of Copyrighted Materials sections of this policy.

### *Printed Music (Paper and Electronic)*

Copying of printed music (paper or electronic) is permissible under certain fair use guidelines. For more information, visit

[https://www.musiclibraryassoc.org/mpage/copyright\\_home](https://www.musiclibraryassoc.org/mpage/copyright_home).

### *Audio (Analog and Digital)*

Copyright law protects live and recorded (analog or digital) audio performances and the rights to perform and/or record copyrighted works, in all sound formats, including the web. Use of these copyrighted works may require permission from the copyright holder. In the case of music, more than one permission may be necessary—one from the composer, one from the lyricist, and one from the performer. A statement of copyright along with clear attribution of source must be included with each permitted use.

It is prohibited to use campus computer resources to share or distribute copyrighted audio material to others without the permission of the copyright holder. A single copy (analog or digital) of recordings of student performances may be made for evaluation or rehearsal purposes and may be retained by the student, the individual instructor, or the College.

Musical and non-music recordings: Copying or digitizing sound recordings is prohibited unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use (e.g., incorporating a piece of music into a classroom presentation or project). Faculty may make a single copy (analog or digital) for the purpose of constructing aural exercises or examinations or for Library reserve use. A statement of copyright along with clear attribution of source must be included with each permitted use.

### Film and Video

Film and video resources in all formats may only be used in face-to-face classroom instruction or for individual viewing, unless public performance or unlimited use rights have been obtained. Many videos purchased by the College are licensed for classroom use only and exclude public performance rights. The same restrictions apply to personally owned videos or those obtained from other sources. Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be shown. The Library may loan video resources to patrons for personal use, including those labeled "For Home Use Only."

It is prohibited to use campus computer resources to share or distribute any type of copyrighted video and film material, as a whole or in parts, to others without the permission of the copyright holder. A statement of copyright along with clear attribution of source must be included with each permitted use. Duplication from one format or standard to another (e.g., film to digital format) depends in part on the availability of the title in the alternate format or standard.

### Broadcast Programs

Recording of broadcast programs (television, radio, webcast) is subject to the following:

- Most broadcast recordings, when allowed, may be kept for a limited time (45 days) and must be erased when time limits expire.
- Recorded broadcasts may be shown to students no more than twice within the first 10 class days of the 45-day retention period. The second showing may only be used as necessary for instructional reinforcement.
- The taped broadcast recording may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
- All copies of broadcast recordings must include the copyright notice on the broadcast program as recorded.
- The broadcast recordings may not be physically or electronically altered or combined with others to form anthologies. They need not necessarily be used or shown in their entirety.
- The time limit restrictions do not apply in the case of hard news (local, regional, or network newscasts, interviews concerning news events, and on-the-spot coverage of news events).
- Broadcast recordings without additional permissions from the copyright holder may not be added to College collections.

For more information, visit

[http://www.ala.org/Template.cfm?%20Section=Library\\_Fact\\_Sheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=24635](http://www.ala.org/Template.cfm?%20Section=Library_Fact_Sheets&Template=/ContentManagement/ContentDisplay.cfm&ContentID=24635).

### *Images (Analog and Digital)*

Downloading, distributing, reproducing and publishing images are subject to limitations. Faculty and students may not reproduce/publish copyrighted images without permission, except according to fair use guidelines. Images can include art, photography, graphics (such as drawings, charts, logos, and cartoons), PowerPoint presentations, animations, etc.

The following guidelines apply to the reproduction of images (35mm slides, photographs, digital images) and their use for educational purposes, including classroom use and use in multimedia creations and/or presentations.

#### Example of Uses Permitted

- Using images for nonprofit and educational purposes
- Using images for teaching (including multiple copies for classroom use)
- Using images for research and scholarship
- Using images for comment, criticism, review, analysis, discussion, or other similar purposes associated with instruction or scholarship

#### Example of Uses Not Permitted

- Using images for commercial activity
- Making more than one copy of a slide or digital image
- Making images available on the web (except on a password-protected educational site) or in another public forum
- Using images repeatedly or long-term Publishing images (e.g., in an article or book) without proper permission

Faculty may display digital images for educational purposes, including face-to-face teaching of curriculum-based courses, and research and scholarly activities. They may also compile digital images for display on password-protected institutional sites to students enrolled in a course given by that faculty for classroom use, after-class review, or directed study, during the semester in which the course is given. Faculty may also use or display images in connection with lectures or presentations in their fields, including uses at non-commercial professional development seminars, workshops, and conferences.

Students may use digital images in an academic course assignment such as a term paper or thesis or in fulfillment of degree requirements. Students may also display their academic work incorporating digital images for courses for which they are registered and during formal critiques. They may also retain their academic work in the personal portfolios for later uses such as graduate school and employment applications.

#### *Multimedia Creations and Presentations*

Faculty may incorporate the work of others in their multimedia creations (following fair use guidelines) to develop curriculum materials where access is limited to students enrolled in the class and others with curricular justification (with all sources acknowledged).

Students may incorporate the works of others into their multimedia creations (following fair use guidelines) and display them for the exclusive purpose of fulfilling their academic assignments (with all sources acknowledged).

Faculty and students may demonstrate their multimedia creations at professional symposia and retain their creations in their own portfolios. Display and/or dissemination are restricted to a period of two years from the time of the first instructional use or public display.

Retention within a portfolio does not include the right to display multimedia works in a public forum, such as the web, unless permission from the copyright owners has been obtained for this purpose.

For more information, see Visual Resources Association, Image Collection Guidelines and U.S. Copyright Office.

#### *Computer Software*

Copyright law protects computer software from unauthorized use and duplication. All software must also be used in accordance with the terms of its license, which usually states how programs may or may not be copied. Software documentation is also covered by copyright law and may only be copied in accordance with its software license or the general guidelines for copying printed or electronic material.

WDTC negotiates site licenses with selected software vendors for some of the products used most frequently on campus. For all other software, the department or end user must purchase an individual or multi-user license for each machine on which the software will be installed.

Usually, computer software may be copied for backup purposes only. With a few rare exceptions, WDTC software licenses do not permit use of the software on home or personally owned machines.

**III. Definitions - None**

**IV. Reporting Procedures** – policy violations must be reported to the Director of Instructional Support and Professional Development.

**V. Dissemination of Policy and Training**

- A. This policy shall appear on the WDTC website on the policy page.
- B. Faculty and students are informed through their respective handbooks.
- C. All employees complete a Copyright Compliance Quiz at the start of each academic year.
- D. Copyright posters are displayed at each copier on campus.

Legal References:

[Title 17 of the United States Code](#)

United States Copyright Act of 1976 as amended

Digital Millennium Copyright Act of 1998

Technology, Education and Copyright Harmonization Act of 2002

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