



Title:	Use of Copyrighted Works	Type:	Key Institutional
No.: KI 1004		Approval Date: 6-25-2014; Links Updated 9-22-2014; Updated 3-9-2015 (changes in Student Affairs)	
Responsible Office: VPAA & Provost		Approved By: Faculty Exec Council, P&BC, President's Staff, Acting President	
Next Review: 2019		Revision No:	

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I. Purpose/Introduction/Rationale

Rollins College is committed to complying with all applicable United States (U.S.) copyright law. This includes the full exercise of the rights accorded to users of copyrighted works under the fair use provision (17 U.S.C. § 107), the so called library exemption (17 U.S.C. § 108), and the TEACH Act (17 U.S.C. § 110) of Federal copyright law. To that end, the College shall inform and educate its faculty, staff, and students about copyright law, their fair use rights and the application of the four factors for determining those rights as set forth in 17 U.S.C. § 107, and their rights and responsibilities according to §§ 108 and 110.

The fair use clause provides generous, but not unlimited, provisions for the use of copyrighted works in classroom settings. Students, faculty, and staff members are expected to comply with copyright laws. Distribution of works protected by copyright without permission of the copyright owner may be a violation of Federal or state law. It is the responsibility of those reproducing copyrighted works, or asking other employees of Rollins College, or students to reproduce copyrighted works, to make sure the reproduction is consistent with U.S. Copyright Law.

Rollins College does not permit the unlawful reproduction or distribution of commercially copyrighted music, movies, and software. The College is committed to taking reasonable steps to avoid misuse of its computer network, including the unlawful reproduction or distribution of copyrighted works via that network. If violations are discovered or suspected, College Information Technology personnel may be required (17 U.S.C. §512) to report infringement to the rights holder. Other actions that will be taken include, but are not limited to: warning the user, removing the material, or terminating access to the material.

II. Definition

This policy concerns the use of copyrighted works in education and research. See Section V of this policy for details of works that may be copyrighted and the duration of copyright.

III. Procedure or Application

Uses of Copyrighted Works in Education and Research.

This section is organized around the most common uses of copyrighted works in education and research and attempts to provide guidance in these areas. However, many uses of copyrighted works in education involve the doctrine of fair use and the provisions of 17 U.S.C §107 -- Limitations on Exclusive Rights: Fair Use. Whether or not a particular case is fair use will depend on the facts of the specific case.

1. Inclusion in printed or online course packs to be sold to students via the bookstore.

Faculty seeking to include a copyrighted work in a course pack must seek permission of the copyright holder. In the case of course packs printed or compiled online by Print Services (<http://www.rollins.edu/printservices/>) and sold through the Bookstore, Print Services staff will investigate and where necessary obtain all copyright permissions. All costs will be incorporated into the total cost of the course pack and passed on to the students.

2. Inclusion in Electronic Course Reserves or the Learning Management System (LMS).

In both Electronic Course Reserves and the LMS, access to the copyrighted works is restricted to the students enrolled in the course. All faculty members, or staff acting on their behalf, are required to complete the [Fair Use Checklist](#) online to determine whether or not their proposed use of the copyrighted work or portion of the copyrighted work can reasonably be deemed to be fair use of the copyrighted work.

3. Distribute paper copies in class to students.

All faculty members, or staff acting on their behalf, are required to complete the [Fair Use Checklist](#) online to determine whether or not their proposed use of the copyrighted work or portion of the copyrighted work can reasonably be deemed to be fair use of the copyrighted work.

The legislative history of the 1976 Copyright Act contains a set of Guidelines for Classroom Copying in Not-for-Profit Educational Institutions (“Classroom Guidelines”). These Classroom Guidelines provide a “safe harbor” for the reproduction and distribution of photocopies of printed materials in the classroom. Actions stated in the guidelines are likely to constitute fair use. While some are discussed herein, see (<http://www.copyright.gov/circs/circ21.pdf>) for a complete listing of permitted activities.

A single copy of any of the following may be made and kept by faculty or a staff member for research or teaching purposes: a chapter from a book; an article from a periodical or newspaper; a short story, short essay or short poem; or a chart, graph, diagram or picture from a print publication.

Multiple copies may be made and distributed to students if ALL of the following conditions are met: no more than one copy per student; copyright notice appears on the first page; the copied material is only a small portion of the source work; the copying is spontaneous; the copying is for a single course; the copying is not cumulatively significant; and the same material is not repeatedly copied. Note that workbooks and test books may not be copied at all.

4. Distribute online copies via e-mail to students.

Faculty members are strongly discouraged from using e-mail, as a method for distributing copies of copyrighted works to students, or asking staff to do so on their behalf. E-mail makes it too easy for students to forward and thereby copy and distribute copyrighted materials to others. Instead faculty members are encouraged to consider distribution according to Section III, item 2 of this policy, or to e-mail links to legally acquired copies of the works (either licensed to the College, see Section V item 6 of this policy, or from the rights holder's site through sharing mechanisms provided by the rights holder).

5. Inclusion of a copy in a website other than the authorized LMS of the College

Faculty members are strongly encouraged to use the LMS of the College. The LMS already includes many controls that weigh in favor of fair use. Other web sites may not include limits on access and may thus allow the public distribution of the copyright works. However, there may be valid pedagogical reasons why a faculty member is required to use an alternate website or platform. If there are valid pedagogical reasons why the materials must be distributed via another website, the faculty member, or staff members acting on their behalf must complete the Fair Use Checklist. If the boxes “For public distribution” (Factor 1) or “Access not limited” (Factor 3) are checked, the proposed use is likely not to constitute fair use and you must seek

permission. See Section V, item 2 of this policy for instructions on seeking permission. All copyright fees will be charged to departmental budget of the faculty seeking to use the copyrighted work.

6. Performance of film, video, or other media

Showing or “performing” a motion picture or other audiovisual work at the College can be important for teaching and other educational or research activities, but must be made in compliance with copyright law. One of the rights of the copyright holder in a film is the right to make a “public performance.” Therefore, the performance of a copyrighted film may be made only with permission from the copyright owner or consistent with one of the following exceptions or limitations in the copyright law. In all cases, the work shown must be lawfully acquired.

6.1 In the classroom to enrolled students in a course.

17 U.S.C. § 110(1) allows an exception to the requirement to seek permission when a motion picture or audiovisual work is shown to students enrolled in the course in a face-to-face classroom or another equivalent location in the context of a course. This means that you may use sound recordings, live performances, readings, films or videotapes, slides or any other performance or display of copyrighted works without restriction and without permission so long as you are using them for educational purposes in a classroom or like place. This exception is limited, however, to performances and display only. This exception does not allow for the making of copies or placing materials on web pages.

6.2 Over a computer network to enrolled students in a course.

The TEACH Act of 2002 amended 17 U.S.C. § 110(2) to allow an exception to the requirement to seek permission when a motion picture or audiovisual work is shown over a network to students enrolled in a course with the following limitations.

- a) If the work was produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, permission must be sought.
- b) The performance must consist of reasonable and limited portions of the work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session. Faculty members must be able to pedagogically justify the portion of the work to be transmitted over the network (i.e., the performance or display is directly related and of material assistance to the teaching content of the transmission) and may be asked to do so in writing by the staff charged with making the transmission.
- c) The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities.
- d) The transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to students officially enrolled in the course for which the transmission is made.

6.3 Public performance of a film or video on campus.

Public performance is one of the exclusive rights of the copyright holder of a film or video. Therefore, if the performance is open or advertised to the campus community or the public, you must seek permission to perform the work. Some films acquired by the Library have been

purchased with Public Performance Rights, noted in the Library public catalog record. Films with purchased Public Performance Rights may be performed without seeking further permission.

The Center for Inclusion and Campus Involvement can assist student organizations with licensing performance rights for public performances of films on campus. Contact the Center for more information.

7 Incorporation of copyrighted works into works created or compiled by students, faculty, and staff.

This policy concerns the use of copyrighted works in education and research. Employees of the College who use copyrighted works in the course of the business of the College, other than research or education, must seek permission of the copyright holder.

7.1 Faculty and staff publications.

Faculty who wish to incorporate the copyrighted works of others (images, music, music performance, text, video and other audiovisual works) into scholarly works are advised to seek the advice of their publisher or journal, as applicable. If faculty plan to distribute their work outside of established institutional channels (e.g. to self-publish) they are advised to seek their own, personal legal advice. All such permission fees are the responsibility of the author.

7.2 Other faculty authored works sponsored or published by Rollins College (blogs, wikis, videos, etc.)

If such works are designed for use in an instructional context (and access is limited to the classroom, the LMS, etc.) the provisions of Sections III, items 1 through 6.2 of this policy apply.

If the work is open to public display and performance or widely distributed by publication, faculty authors must seek the permission of the copyright owner for the intended use of the copyrighted work. All such permission fees are the responsibility of the sponsoring department at Rollins.

7.3 Student authored works.

In many courses students produce work and complete assignments that require, encourage, or allow the student to incorporate copyrighted works. Examples of such student work include – papers incorporating copyrighted images, videos or other audiovisual works incorporating copyrighted images, video footage, or sound recordings, and websites, blogs, and wikis incorporating copyrighted text, images, audiovisual works, or sound recordings.

If access to such student work is restricted to the faculty member and other students enrolled in the class, such student work is deemed to fall within the limitations to the copyright owners exclusive rights under U.S.C. 17 § 110 or fair use under § 107. If access to such student work is not restricted to the faculty member and enrolled students in the course, for instance, if the student work is uploaded to open video sharing services like YouTube, or is accessible via unrestricted blogs, wikis, or websites, or is made accessible without restriction via the College's institutional repository, then the presumption is that the student, or faculty member in the case of collective works authored by all the students in the class, must seek permission of the copyright holder to make use of any copyrighted works incorporated in the student work. All

such permission fees will be charged to the departmental budget of the faculty member making the assignment.

8. The Role of the Fair Use Checklist

The use of the [Fair Use Checklist](#) establishes a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise. A copy of the completed checklist will be automatically sent to the e-mail address of the person completing it. Faculty and staff are required to retain a copy of the completed the checklist for three years in cases where they deem their proposed use of the copyrighted work to be fair use.

9. Permission fees

All copyright permission fees incurred in the course of following this policy (except in the case of Section III, item 1 and III, item 7.1 of this policy) will be charged to the faculty member’s department budget. See Section V, item 2 of this policy for information about seeking copyright permissions.

IV. Related Policies or Applicable Publications

This draft replaces the section “Use of Copyrighted Material” in the Rollins College Intellectual Property Policy at <http://www.rollins.edu/hr/policies/docs/general-policies/010000.pdf> the “Copyrighted Materials” section of the Faculty Handbook (Section II) <http://www.rollins.edu/provost/documents/Rollins-College-Faculty-Handbook.pdf>

V. Appendices/Supplemental Materials

1. Further information and help.

This policy is organized around the most common uses of copyrighted works in education and research. If your proposed use of copyrighted works is not covered or you have further questions please contact the Office of the Library Director. In some cases staff and faculty may be referred to legal counsel. All such referrals must be made through the Office of the Provost. More information can be found at “Copyright Help” on the Library website at <http://www.rollins.edu/library/tools/copyright.html>.

2. Seeking copyright permission.

The first step in seeking copyright permission is to locate the copyright owner and ask. There are no special forms that must be used, and permission can be oral or written, though it is preferable to obtain permission in writing. The copyright owner may charge whatever fee he or she wishes, though you may try to negotiate a lower fee. Many publishers and periodicals have a "permissions desk" or a "rights editor," and it is best to submit a written request addressed in this way. You should specify the publication you wish to take from; the precise pages, chapters, photographs or the like you want to use; how many copies you want to make; and the purpose of your use. Many permissions desks now accept requests by e-mail or through the publisher's website.

Certain academic and scholarly journals are enrolled with the Copyright Clearance Center, a private clearing house that provides a relatively simple, one-stop-shopping, method for seeking copyright permissions (978-750-8400; <http://www.copyright.com>).

In the case of III (A), item 1 above, Print Services staff will investigate and seek copyright permission on your behalf (<http://www.rollins.edu/printservices/>). In the case of, Sections III,

items 2 through 6 and items 7.1 and 7.3 of this policy Library staff will investigate and seek copyright permission on behalf of faculty staff and students. Many copyright permissions can be secured immediately, while others can take up to six weeks. You should make sure that you leave ample time to secure the appropriate permissions.

As noted above, the Office of Student Involvement and Leadership (OSIL) can assist student organizations with licensing performance rights for public performances of films on campus. Contact OSIL for more information.

3. Scope of Copyright Protection

Copyright law does not protect facts or ideas. It protects the original manner in which facts or ideas are expressed. A work is protected from the moment it is created and it does not have to contain a copyright notice to be protected.

Typically the creator of a work owns the copyright. However if a work is created in the course of employment or is created under an applicable contract, the work is a “work made for hire” and the employer or contracting party owns the copyright. A work may also be jointly owned by more than one creator.

The following categories of works of authorship may be copyrighted:

- (1) Literary works, which includes computer programming code;
- (2) Musical works, including any accompanying words;
- (3) Dramatic works, including any accompanying music;
- (4) Pantomimes and choreographic works;
- (5) Pictorial, graphic, and sculptural works;
- (6) Motion pictures and other audiovisual works;
- (7) Sound recordings; and
- (8) Architectural works.

Subject to certain limitations, a copyright owner has the exclusive right to:

- Reproduce the work (make both written and electronic copies)
- Distribute copies of the work (in both written and electronic form and whether by sale, donation, or rental)
- Display the work publicly (including on a computer screen)
- Perform the work publicly; and
- Prepare derivative works, such as translations, sound recordings, abridgments, editorial revisions or annotations.

Unless a valid defense exists, exercising these rights without the permission of the copyright holder may subject you to a claim of copyright infringement. Copyright infringement may result in payment of actual damages if they can be proven (lost sales, profits, etc.). Statutory damages may also be available up to \$30,000 per infringement or \$150,000 per infringement if willful. Infringement may also be a crime, punishable by fine or imprisonment.

4. Duration of copyright

Copyright in a work created on or after January 1, 1978, subsists from its creation and, with certain exceptions, endures for a term consisting of the life of the author and 70 years after the author's death. (See 17 U.S.C. § 302 for details). Copyrights in pseudonymous and anonymous

works, and works made for hire continue until 95 years from first publication or 120 years from creation, whichever expires first.

Changes in copyright duration over time mean that determining the current copyright status of a work can be difficult. In some cases, faculty and staff of Rollins College may wish to use the services of the Copyright Office Records, Research, and Certification Section, to research the copyright status of a work. See Copyright Circular 22 for details <http://www.copyright.gov/circs/circ22.pdf>.

In general, works published in the U.S. before January 1, 1923 can be assumed to be in the public domain, are no longer subject to copyright, and require no permission to use. For materials published after that date consult this chart <http://www.unc.edu/~unclng/public-d.htm>.

5. U.S. Federal government documents.

17 U.S.C. § 105 states, “Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.” Most works produced by Federal government employees in the normal course of their employment are in the public domain and require no permission to use. However, some works published by the Federal government may include copyrighted works, or may be produced by contractors or grantees who retain the copyright to the work. § 105 does not pertain to works published by state or local governments. If in doubt, seek further assistance (see Section V, item 1 above).

6. Your own copyrighted works

The ownership of works created by faculty, staff and students is discussed more fully in the Rollins College Intellectual Property policy. If you own the copyright to a work, and have not assigned that copyright to someone else, or to a publisher, you retain all of the exclusive rights of the copyright holder listed in 17 U.S.C. § 106. If you have assigned all or some of your exclusive rights in your copyright to a publisher, the provisions of the contract supersede your exclusive rights. Rollins faculty and staff are encouraged to examine such contracts carefully before signing, to retain as many of their exclusive rights as possible, and retain a copy of the signed contract for future reference.

6.1 Arts & Sciences and College of Professional Studies Faculty Open Access Policy

The faculty of Arts & Sciences and the faculty of the College of Professional Studies of Rollins College are committed to disseminating the fruits of their research and scholarship as widely as possible. In keeping with that commitment, the faculty adopts the following policy: Each member of the faculty grants to Rollins College nonexclusive permission to make available the final, peer-reviewed, manuscript version accepted for publication of his or her scholarly articles (hereafter referred to as “works”) and to exercise all rights under U.S. copyright law in those works for the purpose of open dissemination. In legal terms, each faculty member grants to Rollins College a nonexclusive, irrevocable, paid up, non-commercial, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly works, in any medium, provided that the works are not sold for a profit or used for any commercial purposes, and to authorize others to do the same. The policy will apply to all peer-reviewed scholarly works, including works jointly authored with persons who are not members of the Rollins faculty of Arts & Sciences or the College of professional Studies, written while the person is a

member of the faculty except for any works completed before the adoption of this policy, any works for which the faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy, and any work for which the author might reasonably expect to receive royalties (including monographs, textbooks, musical, or other creative works.). The Professional Standards Committee will waive application of the policy for a particular work upon written notification by the author, who informs Professional Standards Committee of the reason.

To assist Rollins College in distributing the scholarly works, on or before the date of publication, each faculty member will make available an electronic copy of his or her final version of the work at no charge to a designated representative of Olin Library in appropriate formats (such as Microsoft Word or PDF) specified by the library. Each work will be embargoed until it has appeared either in print or online at the publisher's web site, whichever comes first. Olin Library will make the works available to the public in an open-access repository.

The Professional Standards Committee will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the faculty. The policy is to take effect immediately; it will be reviewed after two years by the Professional Standards Committee, with a report presented to the faculty.

The faculty of Arts & Sciences calls upon Olin Library to develop and monitor a plan for a service or mechanism that would render compliance with the policy and the waiver procedure as convenient for the faculty as possible. To this end, the faculty authorize the Deans of the Arts & Sciences and CPS to provide appropriate Olin Library personnel with the information recorded in Section II, item 1 "Research, Scholarship, and Artistic Activity" of the Faculty Self-Assessment Reports.

7. Copyrighted works licensed by the college.

Rollins College has invested heavily in access to information resources; many of them copyrighted works, to meet the educational and research needs of students and faculty of the College. Faculty and staff are strongly encouraged to investigate whether or not the work they propose using has already been licensed for the proposed use by the Library or by Information Technology. Contact the Research Help Desk (<http://www.rollins.edu/library/yourlibrarian/askalib.html>) for assistance.

8. Limitations of this Policy

Rollins College hopes that this guide answers many of your questions about copyright and fair use. This guide provides a general, and limited, discussion of many topics relevant to copyright permission and protection. This guide does not give legal advice. If you have specific copyright questions please contact the many resources provided in this guide. If you need additional assistance please contact the Office of the Library Director as detailed in Section V, item 1.

Appendix A -- Fair Use Checklist

Fair Use Checklist¹

Name: _____ Date: _____

Class or Project: _____

Course Number and Term: _____

Course Title: _____

Title of Copyrighted Work: _____

Author and Publisher: _____

Portion(s) to be used (e.g., pages, chapters, minutes, etc.) _____

Instructions: Consider each statement in the four factors below. Check the box next to the statement that best characterized the proposed use of the copyrighted work. Not all of the facts will be present in any given situation. Check only those facts that apply to your use. Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors must seek permission from the rights holder. Where the factors are evenly split, instructors must consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified. No single item or factor is determinative of fair use. Once the four factors have been considered, place a check mark in the box next to whether or not the proposed use weighs in favor of or against fair use.

Complete and retain a copy of this checklist for each “fair use” of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise.

¹ Revised for use by Rollins College, based upon the University System of Georgia “Fair Use Checklist”, http://www.usg.edu/images/copyright_docs/fair_use_checklist.pdf

Overall the proposed use of the copyrighted work

	<i>Weights in Favor of Fair Use</i>		<i>Weights Against Fair Use</i>
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Factor 1: Purpose and Character of the Use

	<i>Weights in Favor of Fair Use</i>		<i>Weights Against Fair Use</i>
	Nonprofit educational institution		Commercial activity, profit from use
	Used for purpose of teaching (including multiple copies for classroom use) and/or scholarship or criticism, comment, news reporting, or parody		For public distribution
	Used for noncommercial, nonprofit educational use		Used for entertainment
	Transformative (use changes work for new utility or purpose.)		Mirror image copying
	Use is necessary to achieve your intended educational purpose		Use exceeds that which is necessary to achieve your intended educational purpose
	<i>Factor Weighs in Favor of Fair Use</i>		<i>Factor Weighs Against Fair Use</i>

Factor 2: Nature of Copyrighted Work

	<i>Weights in Favor of Fair Use</i>		<i>Weights Against Fair Use</i>
	Published work		Unpublished work
	Factual/informational and educational in nature or nonfiction work		Fiction or highly creative work (art, music, novels, films, plays, poetry)
	Non-consumable work		Consumable work (workbook, test)
	<i>Factor Weighs in Favor of Fair Use</i>		<i>Factor Weighs Against Fair Use</i>

Factor 3: Amount and Substantiality of Portion Used

	<i>Weighs in Favor of Fair Use</i>		<i>Weighs Against Fair Use</i>
	Decidedly small portion of work used (no more than 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)		Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
	Portion used is not central or significant to entire work as a whole		Portion used is central to work or is the "heart of the work."
	Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose		Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
	Access limited to students enrolled in course for only the term of the course		Access not limited
	<i>Factor Weighs in Favor of Fair Use</i>		<i>Factor Weighs Against Fair Use</i>

Factor 4: Effect on Market for Original

	<i>Weighs in Favor of Fair Use</i>		<i>Weighs Against Fair Use</i>
	Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price.		Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
	Decidedly small portion used		Large portion or entire work used
	User or library owns lawfully acquired or purchased copy of original work		User or library does not own lawfully acquired or purchased copy of original work
	Use stimulates market for original work		Use impairs the market or potential market for original
	<i>Factor Weighs in Favor of Fair Use</i>		<i>Factor Weighs Against Fair Use</i>

VI. Rationale for Revision

Regular policy review prompted by recent Federal court decisions and regional reaffirmation of accreditation requirements.