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References:	
Applicability:	<i>Des Moines University</i>

## Copyright Compliance

### I. POLICY

It is the policy of Des Moines University (DMU) to comply with the United States Copyright Act of 1976 as amended ("Copyright Act"), the Technology, Education and Copyright Harmonization Act of 2002 ("TEACH Act"), and the Digital Millennium Copyright Act of 1998 ("DMCA"). All use or reproduction of Copyrighted Materials must comply with the provisions of the law. DMU prohibits the duplication, distribution, or use by members of the DMU community of any Copyrighted Material not covered by fair use or the TEACH Act, specific exemptions in the copyright law, licenses and agreements, or written permissions from copyright holders. Any use of DMU computing resources to illegally duplicate, share, or distribute any Copyrighted Material is prohibited.

### II. SCOPE

This policy applies to DMU employees and students. Compliance with this policy is a requirement for participation in educational, research and clinical activities at DMU. Violations of this policy may subject the violating party to both DMU disciplinary actions up to and including dismissal, termination of employment, or severing of ties with the institution, as well as civil and criminal penalties defined in the Copyright Act. Under the law, individuals as well as the institution can be held liable for copyright infringement.

### III. DEFINITIONS

#### A. Copyrighted Material

Original works of authors, artists, and publishers, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work is almost certainly protected by copyright. Examples of commonly copyrighted materials include, but is not limited to:

- Printed materials such as books, magazines, journals, newsletters, maps, charts, and photographs
- Unpublished materials, such as analysts' and consultants' reports
- Non-print materials, including sculptures, sound recordings, and motion pictures
- Electronic content, including blogs, informational websites, podcasts, computer programs and other software, sound and video files, electronic images, and flashcards shared on study aid websites
- Educational materials created by faculty members and used in a course

Works may be protected by copyright laws even if they are not registered with the U.S. Copyright Office and

even if they do not carry the copyright symbol (©).

## IV. PROCEDURES

It is the responsibility of the individual who intends to use, copy, reproduce, or otherwise distribute the Copyrighted Material to do so in compliance with the options available under the Copyright Act as described below. The principles that follow provide guidance for members of the DMU community who wish to reproduce, use or digitize Copyrighted Materials.

Section A describes exceptions which may be employed for academic or educational uses of Copyrighted Materials. If the use is not academic in nature or no exception applies, users must obtain express permission from the copyright owner (or representative) as outlined in Section B.

### A. Exceptions to Express Permission Requirement

In the educational setting, the most pertinent exceptions are fair use, face-to-face teaching activities of a nonprofit educational institution, certain distance learning activities of a nonprofit educational institution, and reproduction by a library as permitted by the Copyright Act. These exceptions can be applied to allow for noncommercial educational purposes.

#### 1. Fair Use (17 USC Section 107)

The fair use exception allows limited reproduction and other uses of Copyrighted Materials without express permission for purposes such as criticism, comment, news reporting, teaching, scholarship and research. If the reproduction or use is for one of these purposes, a determination as to whether it meets the fair use exception must be made based on a case-by-case assessment and balancing of four factors: purpose, nature, amount and effect.

**Factor One:** The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational use. Uses by a nonprofit organization for teaching, scholarly work, and research are more likely to support a determination of fair use. Conversely, uses by a commercial organization and/or uses for the purpose of profit making, entertainment or avoiding purchase of the work are less likely to fit into the fair use exception.

**Factor Two:** The nature of the Copyright Material. Fair use is more likely to apply to materials that are factual in nature as opposed to creative, imaginative works developed for entertainment purposes.

**Factor Three:** The amount and substantiality of the portion used in relation to Copyrighted Material as a whole. If the amount used is a large percentage of the work, it does not support a finding of fair use; small portions of the work are more likely to be a fair use. There are not strict guidelines regarding acceptable percentages of work that qualify for fair use.

**Factor Four:** The effect of the use upon the potential market for or value of the Copyrighted Material. Uses that do not make a significant impact on the economic viability of the materials to the Copyright holder are more likely to be fair use. If the anticipated use substitutes for the purchase or licensing of the Copyrighted Material, significantly reduces the market for the work, involves making numerous copies of the work or digitizing the work and making it widely accessible, it does not support a finding of fair use.

- a. Fair use applies to printed and digital or electronically stored Copyrighted Materials.

- b. Determining the applicability of this exception is very fact and circumstance specific and all four factors described above must be balanced and considered. Taken as a whole, the factors must favor, rather than oppose, fair use in order to meet this exception. Where the factors favoring fair use outweigh those against it, reliance on fair use may be justified. If the balance is not in favor of fair use, users should seek permission for use from the copyright holder
- c. DMU has created a [Fair Use Checklist](#) to assist users in conducting and documenting fair use analyses. Use of the tool helps demonstrate that the individual making use of the copyrighted material made a good faith effort to use the material in compliance with Copyright Law. Users are encouraged to retain records documenting the fair use analysis for a period of five years following the use.
- d. The DMU Library offers online resources on copyright and guidance on conducting a fair use analysis at: <http://lib.dmu.edu/policies/copyright>.
- e. Reference to the copyright and clear attribution must be included with each permitted use.
- f. Faculty members who use Copyrighted Materials in course materials should include the following notice in the course syllabus advising students that course materials may be subject to copyright protection.
- g. DMU recommends that the user retain records documenting the fair use analysis for a period of five years following the last use of the material.

Copyright Notice: Information presented within this course may contain copyrighted material used for educational purposes. It is intended for use only by students enrolled in this course. Reproduction or distribution of this material is strictly prohibited. Unauthorized use of this material is a violation of the DMU Student Code of Conduct and may also violate federal copyright protection laws.

## 2. Face-to-Face Teaching Activities of a Nonprofit Educational Institution (17 USC Section 110(1))

The performance or display of Copyrighted Material by an instructor or student in the course of face-to-face teaching activities of a nonprofit institution in a classroom or similar place devoted to instruction is not an infringement of the copyright, unless the performance or display of individual images is given by means of a copy that was not lawfully made and that the person responsible for the performance knew or had reason to know was not lawfully made. This exception does not allow the duplication or the posting of digital versions of the Copyrighted Work.

## 3. Digital Teaching Materials and Distance Learning (17 USC Section 110(2), TEACH Act)

The TEACH Act allows faculty to use copyrighted works in digital teaching materials for students enrolled in traditional classroom settings as well as for distance learning courses. The following conditions must be met in order to use Copyrighted Materials under the TEACH Act:

- a. The material is provided at the direction of or under the actual supervision of a faculty member as an integral part of the curriculum.
- b. The material is directly related and of material assistance to teaching the subject matter of the course.
- c. The amount of material is comparable to that allowed under the face-to-face or traditional classroom teaching exception.
- d. The transmission is made solely for and limited to (to the extent technologically feasible) students

officially enrolled in the course.

- e. Notice is provided to students that course materials may be subject to copyright protection. Required notice to be placed on syllabi and course materials containing Copyrighted Materials:

Copyright Notice: This presentation may contain copyrighted material used for educational purposes under the guidelines of fair use and the TEACH Act. It is intended for use only by students enrolled in this course. Reproduction or distribution of this material is strictly prohibited. Unauthorized use of this material is a violation of the DMU Student Code of Conduct and may also violate federal copyright protection laws.

- f. Technological measures are taken to allow students access to the material for use in the class, but prevent students from storing or further disseminating the work to others. Such access must be for a limited duration as needed for the students for the completion of the course or program.

The TEACH Act **does not** apply to the following:

- Use of works specifically created for use as distance learning products.
- Use of works that will be used repeatedly in course materials.
- Use of works that the instructor knows or has reason to believe are not lawfully made.
- Conversion of print or other analog versions of works into digital formats unless no digital version of the work is available.

If a use of teaching materials in digital form does not meet the TEACH Act requirements, a fair use analysis should be completed to determine if the use is permitted under the fair use exception.

#### 4. Reproduction by the University Library (17 USC Section 108)

In the following circumstances, the DMU library may reproduce and/or distribute a copy of a copyrighted work in the library collection if the purpose of the reproduction or distribution is not for direct or indirect commercial advantage and the reproduction or distribution includes a copy of a notice of copyright. The library should display a warning of copyright and include it on request forms.

- a. Library user requests for articles and short excerpts. At the request of a library user or another library on behalf of a library user, the DMU library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the library user, and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research.
- b. Library user requests for entire works. One reproduction of an entire book or periodical may be made by the library at a library user's request, or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship and research.
- c. Archival reproductions of unpublished works. Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises.

Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the DMU library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.

- d. Replacement of lost, damaged or obsolete copies. The DMU library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library's digital storage system.
- e. Interlibrary Loan (ILL). The DMU library may participate in interlibrary loans without obtaining permission provided that the aggregate quantities of articles or items received do not substitute for a periodical subscription or purchase of a work. DMU follows current CONTU guidelines developed by Commission on New Technological Uses of Copyrighted Works for defining aggregate quantities.

## B. Express Permission

DMU faculty, staff and students who use Copyrighted Materials in educational, research and/or other activities affiliated with DMU will obtain the express written permission for the anticipated use, copying, duplication, reproduction or distribution of all or part of any Copyrighted Materials from the owner of the copyright prior to such use unless the intended reproduction or use of the work fits within one of the exceptions provided in Copyright Act as described in IV. A above.

Before approaching copyright holders for permission to use charts, graphs, slides, and other graphics, users may wish to contact the DMU Library to see if that item (or one similar to it) is already available to them via licensed library resources.

1. Express permission can be obtained directly from the copyright holder or their licensing agent. Permission can be obtained at [Copyright Clearance Center's website: www.copyright.com](http://www.copyright.com).
2. Any fees for use will be the responsibility of the user or user's department.
3. The user or user's department should maintain records documenting the permission granted and any applicable limitations for a period of five years following the last use of the material. Include date, source of permission, and a copy or scan of the material being used, or for books or journal articles, a copy or scan of the title page or table of contents. Documentation should include a description of the method of duplication, reproduction or distribution, e.g. printed course packet, posting in learning management system, CD, PowerPoint slide, etc.
4. When the Copyrighted Material is used, the users should indicate that the work is being used with permission and include an attribution to the copyright owner on the material.

## C. Digital Uses

1. Any digital use of Copyrighted Material must comply with the Digital Millennium Copyright Act (DMCA). DMU maintains a [Peer-to-Peer File Sharing/DMCA Compliance Plan](#).
2. DMU computing resources may not be used to duplicate, share, or distribute any Copyrighted Material, including the use of peer-to-peer file sharing technology to illegally acquire or share copyright-protected materials. Users are prohibited from using any technology to circumvent digital protections which control access to or restrict the use of copyright-protected works, such as videos, movies, musical recordings, DVDs, or computer software or programs.

3. DMU has designated a registered agent who is registered with the United States Copyright Office to receive complaints about alleged copyright infringements on DMU's computers and networks.
4. Upon receiving proper notification of a potential infringing activity, DMU will, where possible, remove or block access to the material in question.
5. DMU will investigate to determine the identity of the individual assigned to the device and/or IP address through which the alleged infringement occurred. If the individual is a student, information about the alleged infringement will be reported to the DMU Conduct Officer for follow-up as a violation of DMU's Code of Conduct and this Copyright Compliance policy. If the individual is an employee, ITS will work with HR and the individual's supervisor to address the alleged violation of this Copyright Compliance policy.
6. Disciplinary action may include, but is not limited to, termination or suspension of access to computer/networking services. Individuals may also be subject to civil or criminal liability.

## D. Other Types of Use

### 1. Classroom Handouts

Classroom handouts containing Copyrighted Materials fall into two categories: those that require permission and those that do not. If the handout is a new work for which a faculty member could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, the work may be used without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, copyright permission must be sought.

### 2. Coursepacks

All articles, chapters and other individual works in any print or electronic coursepack require copyright permission. Copyright permission for coursepacks is usually granted by the academic period. Permission must be obtained to reuse a coursepack for each subsequent academic period (e.g., semester, block, terms, etc.).

When ordering coursepacks it is important to clarify who will obtain permission for the coursepack – the copy center or the faculty member. Delegating responsibility for obtaining copyright permission will not provide protection to the user against a claim of copyright infringement.

### 3. Reserves

If the DMU library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. If the library wishes to reproduce additional copies of a work and place them on reserve for students to review, in either paper or electronic format, the library must obtain copyright permission.

### 4. Making Photo or Electronic Copies

Any use of computer or duplicating facilities by students, faculty or staff must comply with the Copyright law. Photocopying or electronically duplicating copyrighted works is subject to a fair use analysis. A single photocopy of a portion of a copyrighted work, such as a copy of an article from a scientific journal made

for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, require express copyright permission.

#### 5. Faculty Developed Materials

Faculty members who are the owners of scholarly and instructional materials may post course material online if they created the material independently, and as long as they have not assigned the copyright to another party, such as through a publication agreement.

## E. Attribution and Source

Any use, duplication, reproduction or distribution of all or part of Copyrighted Material must contain the appropriate attribution of copyright ownership, e.g. Copyright Des Moines University Osteopathic Medical Center, 2019, and an identification of the source from which the Copyrighted Material was taken.

## V. COMPLIANCE

### A. Education for Campus Community

Information related to copyright compliance and the Digital Millennium Copyright Act will be provided to students annually. Training for faculty and relevant staff will occur periodically.

### B. Notice Regarding Copying and Duplication

The following notice will be posted in the DMU Library to advise users that duplication and reproduction of Copyrighted Material must comply with the Copyright law:

"Copying, displaying and distributing copyrighted works, may infringe on the owner's copyright. The University's policy statement on fair use can help you determine whether your use of a copyrighted work may be an infringement. Any use of computer or duplicating facilities by students, faculty or staff for infringing use of copyrighted works is subject to appropriate disciplinary action as well as civil remedies and criminal penalties provided by federal law."

### C. Assistance

Members of the DMU community can contact the Library Director or the Chief Compliance Officer with questions or to request assistance in applying copyright guidelines. Concerns or suspected violations of copyright law or this policy should be reported to the Chief Compliance Officer.

## VI. RESOURCES

- Link to [Copyright Act](#).
- The DMU Library is an excellent source of information on applying copyright requirements to academic uses. See the DMU Library Copyright Libguide at: <http://lib.dmu.edu/policies/copyright>.

## Approved By:

Angela Franklin, Ph.D., President

### General Disclaimer

The information available in PolicyStat is not to be treated or implied as a contract but rather as a unilateral statement of University policies. The University reserves the right to revoke, modify or suspend any of its policies or procedures at any time without notice.

## Attachments

[Peer to Peer File Sharing DMCA Compliance Plan 11.2019.pdf](#)  
1: Fair Use Checklist

## Approval Signatures

Approver	Date
Angela Franklin	11/2019
Erika Linden	11/2019

## Applicability

Des Moines University

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