

# KCTCS Copyright Guidelines for Employees and Students

## I. Basic Copyright Principles

The United States Constitution establishes basic copyright principles. Article I, Section 8, Clause 8 gives Congress the power “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Congress has adopted and periodically amended the Copyright Act. (17 USCA § 101 et seq.)

The Kentucky Community & Technical College System (KCTCS) requires that all college personnel and students adhere to the provisions of the United States Copyright Law (Title 17, United States Code). This law applies to anyone at KCTCS who wants to reproduce, alter, or perform works that are protected by copyright. Examples of these works include printed materials, sound recordings, video recordings, visual art, computer software, and multimedia.

The KCTCS Board of Regents directs the Chancellor or a designee(s) to develop and distribute to students and employees guidelines that:

- clearly discourage violation of the copyright law, and
- inform students/employees of their rights and responsibilities under the copyright law.

**A. Scope:** Copyright applies to works that have been fixed in a tangible medium such as books, photographs, architectural drawings, music, drama, sculpture, motion pictures, electronic media, software, multimedia works, and some databases. The following chart may be used to determine if an item is copyrightable:

<b>Copyright Protected</b>	<b>Not Copyright Protected</b>
<b>Literary works</b>	Works that have not been fixed in a tangible form of expression; written, recorded or captured electronically
<b>Musical works, including any accompanying words (lyrics)</b>	Titles, names, short phrases and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listings of ingredients or contents
<b>Dramatic works, including any accompanying music</b>	Ideas, procedures, methods, systems, processes, concepts, principles, discoveries or devices, as distinguished from a description, explanation or illustration
<b>Pantomimes and choreographic works</b>	Works consisting entirely of information that are natural or self-evident facts, containing no original authorship, such as telephone books, standard calendars, height and weight charts and tape measures and rulers

Copyright Protected	Not Copyright Protected
Pictorial, graphic and sculptural works	Works created by the U.S. government
Motion pictures and other audiovisual work	Works for which the copyright has expired; works in the public domain
Sound recordings	Works for which the copyright has expired; works in the public domain
Architectural works	Works for which the copyright has expired; works in the public domain
Computer software	Works for which the copyright has expired; works in the public domain

**B. The Law:** Copyright law protects the creators of original works. The owner of a copyright has the exclusive right to do and/or authorize others to do such things as:

- Make copies
- Distribute the work
- Display the work
- Perform the work publicly
- Create other works based on the original work (derivative works)

The law balances the owner's rights with the others' needs to use copyrighted material for "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research." (17 USCA §107-*limitations on exclusive rights: Fair use*).

**C. Registration:** Registration is not required to obtain a copyright, though registration may be required to enforce a copyright in federal courts. Works published after 1978 are protected even without having a copyright notice on them. If in doubt, assume that copyright applies.

**D. Penalties:** The penalties for copyright infringement can be costly. Under the copyright laws, a court may award up to \$150,000 for each separate willful infringement. KCTCS may also impose severe penalties for not respecting the copyrights of others.

## II. Public Domain Works

Works in the public domain may be freely used. Examples include:

- Works published by the federal government
- Databases of facts
- Works published before 1923

Other works may eventually fall into the public domain. Examples include:

- Works published from 1923 through 1978 are protected for 95 years from the publication date, if proper copyright formalities were followed.
- Works published since 1978 generally have copyright protection for the life of the author plus 70 years.

### III. Copyright Permission Exceptions

The law provides for several exemptions to the exclusive rights of copyright holders. The exemptions that pertain to educators are:

- Fair Use exemption
- Classroom exemptions for performance and display
- Distance Learning exemption
- Library exemption (See Appendix A)

**Fair Use exemption:** 17 USCA § 107 states that protected works may be used to a limited extent, without permission, for purposes such as research, classroom preparation, classroom teaching, review, news reporting, comment and criticism.

The law does not specify limits or situations that may be considered fair or not fair. Instead, Congress intended this section to allow for flexible interpretation. Therefore, each situation must be considered individually and each dispute that arises is decided on a case by case basis.

The Fair Use Doctrine lists four factors that must be considered before using protected works without permission. Educators should consider the following:

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

If there is a dispute and the case goes to court the court will consider each factor and determine whether the use could be considered fair use in the context of that factor. The court will then weigh together the outcomes for all the factors in order to determine whether there is a case for infringement. Consult Appendix B for further clarification of the four factors of Fair Use.

### **Classroom Exemptions for Performance and Display:**

Section 110 grants educators the exemptions that allow them to perform or display works in the classroom. These exemptions fall into two categories:

- Face-To-Face Classroom Setting
- Distance Education And Other Instructional Transmissions

#### *Face-to-Face Classroom Setting*

Educators and students may perform or display or cause to be performed or displayed a protected work in the course of face-to-face teaching (the simultaneous presence of students and teachers in the same location) at a non-profit educational institution in a classroom or other place normally devoted to instruction.

#### *Distance Education and Other Instructional Transmission*

Educators and students may perform or cause to be performed, by means of transmission, protected nondramatic literary or musical works or reasonable and limited portions of any other work, or display of protected works in an amount comparable to that which is typically displayed in the course of a live classroom session provided that the following conditions are met:

1. The work in question is not produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks.
2. The work in question is not transmitted by means of a copy or phonorecord that is not lawfully made and acquired.
3. 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 of a governmental body or an accredited nonprofit educational institution.
4. The performance or display is directly related and of material assistance to the teaching content of the transmission.
5. 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 or officers or employees of governmental bodies as a part of their official duties or employment.
6. The transmitting body or institution does not know or have reason to believe that the transmission was made using a copy that was not lawfully made and acquired.
7. The transmitting body or institution institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection.
8. The transmitting body or institution, in the case of digital transmissions, applies technological measures that reasonably prevent the following:
  - a. retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session
  - b. unauthorized further dissemination of the work in accessible form by such recipients to others

- c. does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination

#### **IV. Digital Millennium Copyright Act (DMCA)**

A. The DMCA provides limited protection for Internet Service Providers, such as KCTCS, from the infringing acts of their users. It also prohibits unauthorized access to a copyrighted work by circumventing technology put in place to protect that work.

B. Regarding KCTCS, the DMCA

- 1) Makes circumventing software anti-piracy measures a crime.
- 2) Outlaws code-cracking devices used to illegally copy software.
- 3) Permits the cracking of copyright protection devices for research and testing computer security.
- 4) Exempts the libraries and KCTCS from anti-circumvention provisions in certain circumstances.
- 5) Limits KCTCS from copyright infringement liability for simply transmitting information over the Internet.
- 6) Requires KCTCS to remove material from users' web sites that appears to constitute copyright infringement.
- 7) Limits KCTCS liability for copyright infringement by faculty.

C. To fulfill the requirements of the DMCA, KCTCS has designated the Office of Legal Services as the agent to receive notification of claimed infringement from copyright owners.

Office of Legal Services  
KCTCS  
300 N. Main St.  
Versailles, KY 40383

phone: 859-256-3294  
fax: 859-256-3127

#### **V. Obtaining Permission to use copyrighted materials**

Asking permission to use copyrighted materials is ALWAYS appropriate. Use the National Association of College Stores form at <http://www.nacs.org/common/copyright/permissionrequest.pdf> or include the following information in a letter:

- Name and address of the copyright holder or distributing body (publisher, producer, organization, etc.)

- Detailed description of educational use including number of copies to be made, if applicable
- Title, author, or editor; copyright or publication date, and book edition or journal volume and issue
- Method of distribution (free or sale, classroom, course pack, long-term reserve in library, etc.)
- Type of reprint (digital, photocopy, scanned, etc.)
- Your name, title, institution, address, daytime phone number with area code, fax number, and e-mail.
- A form describing the use, with blanks for the copyright holder's signature, printed name, title, institution, and date may help expedite the permission

#### **VI. Copyright Tutorials**

Permission has been granted by Maricopa Community College to use this link.

[http://www.maricopa.edu/legal/ip/copyright\\_tutorial/copyright\\_tutorial.htm](http://www.maricopa.edu/legal/ip/copyright_tutorial/copyright_tutorial.htm)

Permission has been granted by University of Texas-Austin to use this link.

<http://www.lib.utsystem.edu/copyright/>

## APPENDIX A

### **17 U.S.C.A. § 108 Limitations on exclusive rights: Reproduction by libraries and archives**

**(a)** Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if--

**(1)** the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

**(2)** the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

**(3)** the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

**(b)** The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if--

**(1)** the copy or phonorecord reproduced is currently in the collections of the library or archives; and

**(2)** any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

**(c)** The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if--

**(1)** the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

**(2)** any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

**(d)** The rights of reproduction and distribution under this section apply to a copy, made from the

collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if--

**(1)** the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

**(2)** the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

**(e)** The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if--

**(1)** the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

**(2)** the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

**(f)** Nothing in this section--

**(1)** shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

**(2)** excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

**(3)** shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

**(4)** in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

**(g)** The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee--

**(1)** is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

**(2)** engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): Provided, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

**(h)(1)** For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

**(2)** No reproduction, distribution, display, or performance is authorized under this subsection if--

**(A)** the work is subject to normal commercial exploitation;

**(B)** a copy or phonorecord of the work can be obtained at a reasonable price; or

**(C)** the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

**(3)** The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

**(i)** The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

## APPENDIX B

### Fair Use Exemption:

**A. Purpose and Character of Use**, including whether such use is of a commercial nature or is for nonprofit educational purposes

1. Is the purpose for profit or of a commercial nature?
2. Are there fees charged to students specifically for the materials being used?
3. Is the purpose of the use research, classroom preparation or teaching?
4. Is the use for a course taught at a nonprofit educational institution as part of its regular curriculum?

**NOTE: It is important to realize that an educational use does not automatically mean fair use**

### **B. Nature of Protected Work**

1. Is the work factual or highly creative?  
The case for fair use will be stronger if the work in question is a nonfiction book or scholarly article rather than a short story or an example of modern sculpture.
2. Is the work published or unpublished?  
The case will be stronger if the work is a published, rather than unpublished work. An example of an unpublished work would be a letter housed in a research archival collection, one that has never appeared in a published volume.
3. Are the portions used relevant to the content of the course?

### **C. Amount and Substantiality of Portion Copied or Used**

1. Is the copied portion limited to a small portion of the entire work?
2. Is the copied portion central to the entire work?
  - a. The case for fair use will be weaker if the used portion is the most important portion of the work.
3. Is the copied portion appropriate in terms of amount to the course content?

### **D. Effect of the Use on the Potential Market**

1. Does the use negatively impact the potential market for the sale of the work?
2. Is the material readily available and affordable? Is it feasible to require that students taking the class purchase the material?
3. Is the material consumable? Examples would include tests and workbooks that are meant to be purchased and consumed.

Educators should consider completing the following checklists to help them determine whether their intended use of a protected work may fall under fair use.

### Checklist for Fair Use

Name: \_\_\_\_\_ Date: \_\_\_\_\_ Project: \_\_\_\_\_

Institution: \_\_\_\_\_ Prepared by: \_\_\_\_\_

#### PURPOSE

##### *Favoring Fair Use*

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

##### *Opposing Fair Use*

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

#### NATURE

##### *Favoring Fair Use*

- Published work
- Factual or nonfiction-based
- Important to favored educational objectives

##### *Opposing Fair Use*

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

#### AMOUNT

##### *Favoring Fair Use*

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

##### *Opposing Fair Use*

- Large portion or whole work used
- Portion used is central to the work or is the "heart of the work"

#### EFFECT

##### *Favoring Fair Use*

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

##### *Opposing Fair Use*

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Internet or in other public forum
- Repeated or long-term use

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## Checklist for the TEACH Act

Name: \_\_\_\_\_ Date: \_\_\_\_\_ Project: \_\_\_\_\_

Institution: \_\_\_\_\_ Prepared by: \_\_\_\_\_

### TEACH Act requirements that will likely fall within the duty of the instructor:

1. The work to be transmitted may be any of the following:
  - A performance of a nondramatic literary work; or
  - A performance of a nondramatic musical work; or
  - A performance of any other work, including dramatic works and audiovisual works, but only in "reasonable and limited portions"; or
  - A display in an amount comparable to that which is typically displayed in the course of a live classroom session.
2. The work to be transmitted may not be any of the following:
  - Marketed primarily for performance or display as part of a digitally transmitted mediated instructional activity; or
  - A textbook, coursepack, or other material in any media which is typically purchased or acquired by students for their independent use and retention.
3. Any permitted performance or display must be both:
  - 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 of the educational institution; and
  - Directly related and of material assistance to the teaching content of the transmission.
4. The institution does not know or have reason to believe that the copy of the work to be transmitted was not lawfully made or acquired.
5. If the work to be used has to be converted from print or another analog version to digital format, then both:
  - The amount of the work converted is no greater than the amount that can lawfully be used for the course; and
  - There is no digital version of the work available to the institution or the digital version available to the institution has technological protection that prevents its lawful use for the course.

### TEACH ACT requirements that will likely fall within the duty of the institution:

6. The institution for which the work is transmitted is an accredited nonprofit educational institution.
7. The institution has instituted policies regarding copyright.
8. The institution has provided information materials to faculty, students, and relevant staff members that describe and promote U.S. copyright laws.
9. The institution has provided notice to students that materials used in connection with the course may be subject to copyright protection.
10. The transmission of the content is made solely for students officially enrolled in the course for which the transmission is made.

### TEACH Act requirements that will likely fall within the duty of the information technology officials:

11. Technological measures have been taken to reasonably prevent both:
  - Retention of the work in accessible form by students for longer than the class session; and
  - Unauthorized further dissemination of the work in accessible form by such recipients to others.
12. The institution has not engaged in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent retention or dissemination of their works.
13. The work is stored on a system or network in a manner that is ordinarily not accessible to anyone other than anticipated recipients.
14. The copy of the work will only be maintained on the system or network in a manner ordinarily accessible for a period that is reasonably necessary to facilitate the transmissions for which it was made.
15. Any copies made for the purpose of transmitting the work are retained and used solely by the institution.