



Pima County Community College District Administrative Procedure

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| <i>Legal Reference:</i> | 17 U.S.C. 101, <i>et seq.</i> |
| <i>Cross Reference:</i> | Intellectual Property Ownership, BP 6.06 |

PURPOSE

The purpose of this Administrative Procedure (“AP”) is to help Pima Community College (“College”) faculty and staff comply with U.S. copyright law. This AP addresses options for obtaining permission to use copyrighted materials and exceptions when permission is not required.

SECTION 1: Copyright Overview

- 1.1 Copyright grants the author or creator of an original, creative work certain rights to control that work. Copyright applies to literary, dramatic, musical, and artistic works that are fixed (preserved) in a tangible medium of expression (*e.g.*, books, articles, movies, plays, songs, sheet music, poems, paintings, photographs, videos, computer software and code, web pages, blogs, drawings, choreography, etc.). Copyright grants owners exclusive rights to reproduce all or part of their work, distribute copies of a work, display a work, or publicly perform a work.

- 1.2 Copyright law does not protect the titles of otherwise-protected works (*e.g.*, “Star Wars”) or short phrases from those works (*e.g.*, “May the Force be with You”), nor does it protect personal names or common English-language idioms. However, certain names, titles, and short phrases may be separately protected by Trademark law and could not be used commercially to sell or promote products or services, regardless of their copyright status.

Copyright law also does not protect scientific or historical facts or theories. However, the unique manner in which a fact or theory is expressed or described (*e.g.*, in a specific graphic, chart, or illustration) may be subject to copyright protection.

SECTION 2: Using Copyrighted Works

2.1 Requesting Permission to Use Copyrighted Works

Faculty and staff who wish to use a creative work for College purposes are responsible for determining if that work is copyrighted and then seeking permission from the copyright owner. Permission requests should include a description of the material, title, creator/author of the material, ISBN, publication date, page ranges and other identifying data, information about the intended use including the purpose of use, the length of time it will be used, and who will be using it. A sample permission letter is available on the PCC Library’s Copyright Resource page. Permission must be received in writing to be effective. No copyrighted work may be used prior to receiving permission unless an exemption applies. Permissions should be kept by the person requesting/receiving the permissions, and a copy sent to: copyright@pima.edu

2.2 Fair Use Exemptions

Fair Use doctrine in copyright law permits certain limited uses of copyrighted materials for criticism, comment, news reporting, teaching, scholarship, and research without seeking permission from the copyright holder. Fair use does not automatically mean that the use of copyrighted material in all educational situations is acceptable. To determine whether an intended educational use of copyrighted material qualifies under a fair use exception, these four factors must be considered:

1. **Purpose of Use:** Use of the work for nonprofit, educational purposes or in a transformative way, for example to create a parody, is favored. Use of the work for commercial purposes is disfavored.

2. **Nature of the Work Used:** Use of a factual or nonfiction work is favored. Use of highly creative works such as fiction, art, or music is disfavored.
3. **Amount of Work Used:** Use of a small excerpt of a work or a portion that is not central or significant to the whole work is favored. Use of a whole work, a large portion of a work, or a small excerpt that is critically important to the work is disfavored.
4. **Effect of Use on Market:** Use of a work that has no significant effect on the market for the work is favored. Use of a work that replaces the sale of a copyrighted work or damages the market for the work is disfavored.

Filling out the College's Fair Use Check List (available on the PCC Library's Copyright Resource page) can be helpful in determining whether a proposed use of material falls under the definition of fair use. If a faculty member uses the checklist and determines that the use of materials falls under the fair use exception, the faculty member should keep a copy of the checklist with their course material files for future reference, should a legal challenge arise.

2.3 Classroom Use Exemptions

This exemption gives instructors and students the right to display and perform works as long as that display or performance is occurring in a non-profit, classroom setting during the course of face-to-face teaching activities (*i.e.*, not during remote or distance learning) For online learning see Section 3 below, and using a lawfully obtained copy of the work.

SECTION 3: TEACH Act (Guidelines for Using Copyrighted Works in an Online Educational Environment)

Federal law specifically addresses the use of copyrighted works in online classes: with the "Technology, Education and Copyright Harmonization Act" (TEACH Act), 17 USC §§ 110(2) and 112. Under the TEACH Act, an instructor must reasonably do the following in order to use copyrighted material without permission in an online class:

1. Limit access to copyrighted works to students currently enrolled in the class;
2. Limit access only for the time needed to complete the class session or course;
3. Inform instructors, students, and staff of copyright laws and policies;
4. Prevent further copying or redistribution of copyrighted works; and
5. Not interfere with copy protection mechanisms, like DRM ("digital rights management").

With this summary in mind, the following specific aspects of the TEACH Act are relevant to College staff and faculty using the College's course management system, Brightspace by D2L:

Limiting access: When using Brightspace by D2L for a CRN course shell, the course is already password-protected, limited to the students that are listed on the course roster. Additionally, students lose access to the course five days after the academic term officially ends.

Copyright information: The Brightspace by D2L Homepage features a "Notice to Students" widget that offers information on students using copyrighted materials. An instructor's course syllabus should also feature a link to the College's Student Code of Conduct that features information on the violation of copyright laws.

Preventing the copying and redistribution of digital copyrighted works: This is the responsibility of each instructor at the College. Instructors must know the copyright status of any digital files they share with their students. If any are copyright-protected, the instructor will need to take reasonable steps to prevent students from copying and/or sharing any of the materials used in the instructor's class, such as adding College Library copyrighted digital materials to the instructor's class in Brightspace by D2L. The College Library features article databases like "EBSCO" and video databases like "Films On Demand" and "Kanopy".

Copyright protection mechanisms: Instructor's are advised to not remove any existing copyright protections and to include all copyright notices.

Should instructor's have further questions on the TEACH Act and how it relates to their courses in Brightspace by D2L, they should contact a College Librarian.

SECTION 4: Alternatives to Using Copyrighted Works

4.1 Public Domain

Public domain works are works that can be freely copied, displayed and used.

Public domain works include:

- Works published before 1923 whose copyrights have expired. (On Jan. 1, 2019 works published in 1923 will enter into the public domain.)
- Works produced by the U.S. government

- Works at Project Gutenberg, a provider of free e-books
- Works in which owners have decided to give up all or some of their rights through a Creative Commons license.

4.2 Creative Commons

Material found at Creative Commons is licensed through Creative Commons. Generally, the only consideration the copyright owner requests is a proper acknowledgement consisting of the original copyright notice as well as the name of the author. Faculty can search for Creative Commons materials and find an in-depth explanation of their licenses at <http://creativecommons.org>.

4.3 Library Databases

The College library databases contain materials that may be used for academic purposes under the rights already purchased by the College. Faculty may provide students with access to the database materials by providing the students with a link. For additional copyright information, the College Library has a Copyright Resources page at <https://www.pima.edu/academics-programs/academic-support/library/copyright.html>.

SECTION 5: Copyright Annual Notice

The Provost's office will be responsible for publishing and providing the copyright annual notice to students and Faculty.