Fulton-Montgomery Community College

Copyright Policy

The Congress shall have 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.

United States Constitution, Article I, Section 8
Copyright Policy

Fulton-Montgomery Community College expects compliance with all applicable federal, state, and local laws governing copyrighted materials which grant authors, publishers, and creators control over the copying, distribution, transmission and performance of their original works. Fulton-Montgomery Community College recognizes the importance of the US Copyright law of 2011 including the Technology, Education and Copyright Harmonization (TEACH) Act of 2002 including the Copyright Act (DMCA) of 1998 and the Higher Education Opportunity Act (HEOA) of 2008 and the College’s responsibility to provide information and guidance in support of teaching and learning. This policy applies to students, staff and other non-affiliated users of campus resources.

The President will designate a Copyright Officer. The Copyright will exercise general oversight of the copyright policy for the College and the Copyright Officer will assure that information and guidelines are disseminated and are otherwise available to the public.

FMCC Board of Trustees Policy 2060 (2016-02)

This document details the copyright policy and procedures of Fulton-Montgomery Community College (FM). The primary purpose of this document is to provide a single, consistent approach to copyright compliance on the FM campus. The policy assists with compliance issues relating to the following laws and statutes: the US Copyright Law of 2011 including the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002, the Digital Millennium Copyright Act (DMCA) of 1998, and the Higher Education Opportunity (HEO) Act of 2008 (PL 110-315), and serves as a resource to address day-to-day copyright issues that may occur in the daily business of the College.

This policy covers and is not limited to the following topics: administrative issues such as technology solutions, classroom issues such as course content and online and/or distance education, and issues of ownership for both faculty and student work. The campus copyright officer can be contacted for additional information regarding items in this policy as required.

This document should not be considered legal advice; proper legal advice should be obtained when necessary.
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February 2016
Copyright

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

The rights granted by the Copyright Act are intended to benefit “authors” of “original works of authorship”, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts’ and consultants’ reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those “authors” are the rights to reproduce, distribute, publicly perform and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to “make a derivative work,” such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author’s life plus 70 years after the author’s death. This is often referred to as “life-plus-70”. Works created by companies or other types of organizations generally have a copyright term of 95 years.

For circulars and factsheets that provide information on copyright, visit http://www.copyright.gov/circs. Several Copyright tools can be found in the Resources section at the end of this document.

Fair Use

A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else’s copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

To avoid confusion and minimize the risk of copyright infringement, FM follows standard educational practices and interprets the following situations as fair use:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author’s observations.
- Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning’s paper is directly relevant to that day’s class topic. This would generally cover one time use in only one semester.
- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

If your use does not meet the above criteria and the work is protected by copyright, you will likely need to obtain permission to use the work from the copyright holder or its agent.

Additional information on fair use and instructional parameters can be found in the Faculty section of this document.

Several ‘Fair Use’ tools can be found in the Resources section at the end of this document.
The Higher Education Opportunity Act of 2008 (HEOA) (Pub. L. 110-315) added provisions to the Higher Education Act of 1965 (HEA) requiring institutions to take steps to combat the unauthorized distribution of copyrighted materials through illegal downloading or peer-to-peer distribution of intellectual property.

Below is a list of the HEOA requirements and how FM complies with these requirements:

1. An annual disclosure to students describing copyright law and campus policies related to violating copyright law.
   a. Every year, FM provides information to students through the FM catalog, Student Handbook “The Source” <http://www.fmcc.edu/studentlife/student-handbook/> and in course syllabi.
   b. The campus Academic Integrity Policy <http://www.fmcc.edu/academics/programs/academic-integrity-policy/> indicates repercussions of integrity violations.
   c. The Appropriate Use Guidelines & Procedures webpage that details campus policy related to use of computerized resources on campus and consequences of violations.

2. A plan to “effectively combat” the unauthorized distribution of copyrighted materials by users of its network, including “the use of one or more technology-based deterrents”.
   a. FM employs a bandwidth management device to disallow P2P services. This effectively combats the unauthorized use of its network, systems, computers and electronic resources.

3. A plan to “offer alternatives” to illegal downloading”.
   a. The Library has created a website <http://libguides.fmcc.edu/facultystaff/copyright> which lists legal resources for use by students, faculty and the campus community.

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**Faculty**

**Educational Resources**

**Classroom Handouts**

Classroom handouts are the responsibility of individual teaching faculty. See the Faculty Handbook for information on copier location and campus copying services.

Classroom use of copyrighted materials is subject to copyright law and fair use analysis. Limited use is permitted within the following guidelines as per the Copyright Office’s Circular 21: Reproduction of Copyrighted Works by Educators and Librarians.

I. Single Copying for Teachers

   A single copy of the following items may be made for a teacher’s scholarly research or use in teaching or preparation to teach a class:
   A. A chapter from a book.
   B. An article from a periodical or newspaper.
   C. A short story, short essay or short poem, whether or not from a collective work.
   D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

II. Multiple Copies for Classroom Use:

   Multiple copies (not to exceed more than one copy per pupil in a course) may be made by or for a teacher giving a course for classroom use or discussion, provided that:
A. The copying meets the tests of *brevity* and *spontaneity* as defined below; and
B. Meets the cumulative effect test as defined below, and
C. Each copy includes a notice of copyright.

**Definitions:**

**Brevity:**

i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) an excerpt of not more than 250 words from a longer poem.

ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words or (b) an excerpt from any prose work provided the excerpt is not more than 1,000 words or 10% of the work, whichever is less, and a minimum of 500 words.

(Each of the numerical limits stated in “i” and “ii” above may be expanded to permit the completion of an unfinished line of a poem or an unfinished prose paragraph.)

iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

iv. “Special” works: Certain works in poetry, prose or “poetic prose” which often combine language with illustrations and are intended for children and/or a more general audience fall short of 2,500 words in length. Such “special works” may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages and not more than 10% of the words found in the text may be reproduced.

**Spontaneity:**

i. The copying is at the instance and inspiration of the individual teacher, and

ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

**Cumulative Effect:**

i. The copying of the material is for only one course in the school in which the copies are made.

ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

iii. There shall not be more than nine instances of such multiple copying for one course during one class term.

(The limitations stated in “ii” and “iii” above shall not apply to current news periodicals, newspapers and current news sections of other periodicals.)

**III. Prohibitions:**

A. Copying shall not be used to create, replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts there from are accumulated or are reproduced and used separately.

B. There shall be no copying of or from works intended to be “consumable” in the course of study or teaching—such as workbooks, exercises, standardized tests, test booklets and answer sheets.

C. Copying shall not:
   a. substitute for the purchase of books, publisher’s reprints or periodicals;
   b. be directed by higher authority,
   c. be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Additional information on educational reproduction and use of non-course pack materials can be found in the Circular as well as on Stanford University’s Copyright and Fair Use site.

**Course packs**
Course pack creation is the responsibility of individual teaching faculty. Although the Evans Library does not typically provide course pack creation assistance, teaching faculty are encouraged to consult with the library faculty to ensure that copyright and fair use standards are followed. The campus copyright officer should also be contacted should any questions or concerns arise in the creation of course packs.

Course packs can be created using LAD Custom Publishing. This company provides print and digital instructor created course packs. Instructors need to obtain copyright clearance through the LAD website or the campus bookstore. Any materials that will be included in the course pack needs to accompany the copyright clearance forms. For additional information on LAD Custom Publishing visit: http://www.ladcustompub.com. To create course packs contact Raider Trader Campus Bookstore.

Course Reserve Materials
The Evans Library provides reserve services to all FM faculty. If The Evans Library or a faculty member 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, copyright permission must be obtained. Permission from the copyright holder must be obtained for long-term and/or repeated use.

Ownership and Protection
Ownership of Creative Work
When you or your students create a work, the finished copy is automatically protected under copyright law. While you are not required to register your work for copyright protection, it does provide certain benefits. Registration also allows the owner to “establish a public record of the copyright claim” and claim copyright infringement if their work is used without permission.

If you or your students create physical or digital work, please consider registering your work by visiting the United States Copyright Office website.

FM encourages the use of creative commons licenses for works created by campus faculty. Faculty and students can attach a Creative Commons license to their finished digital work. A Creative Commons license provides content creators with “a simple, standardized way to grant copyright permissions to their creative work.”

The collective bargaining agreement between the College and the faculty union (FACE) Article XV, section J recognizes Intellectual Property Rights as follows: “The Employer recognizes that, in the course of their duties, FACE members may have the occasion to develop intellectual property”. The text of this article/section as well as additional rights related to faculty intellectual property can be found in the agreement, housed in the campus document management system, SharePoint.

Student Papers & Fair Use
A U.S. District Court judge ruled that archiving student papers to assess originality of newly-submitted papers constitutes a fair use under the U.S. Copyright Act, provides “a substantial public benefit” and helps protect the papers from being exploited by others.

Technology
Audio-Visual and Media Use
Teachers in nonprofit educational institutions may use videos designated for “home use” as part of their instructional program. “Home use” videos are usually more popular titles retailed or rented for personal or
family use through local video stores and other outlets. This is enabled by section 110 of the federal copyright law, which exempts media utilization by classroom teachers from the public performance restrictions. Since the library is a regular place of instruction for both classroom groups and individual students, library use is also exempt under this section of the federal copyright law.

These “home use” videos may not be used as part of a non-classroom or enrichment programs open to the public. Public-performance-right materials need to be leased or rented, and any restrictions complied with. Faculty, staff, and student groups may purchase a one-time public performance license here using the list of websites in the Resources section of this document.

As stated within their terms and conditions use of streaming Netflix, Hulu, and Amazon Prime are for personal non-commercial use only.

**Online Resources, Distance Education and Course Management Systems**

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became a law and expanded the latitude that institutions of higher education, including FM, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS).

The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated, or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission.

**Open Educational Resources**

Open Educational Resources (OER) are “high-quality, openly licensed, online educational materials that offer an extraordinary opportunity for people everywhere to share, use, and reuse knowledge.”

In November 2014, the College Senate approved a resolution to formally recognize the use of Open Educational Resources (OER) at the college.

**Students**

Students should make every effort to comply with copyright law and fair use standards as outlined in this document. Additionally, the FM Academic Integrity Policy outlines standards of academic integrity and can be found in the student handbook The Source, Appendix G. This policy, updated April 2014, includes violations, consequences of policy violation, and the Academic Grievance Process.

In addition to adhering to campus policies, students can be proactive by checking their work for plagiarism using The Evans Library’s Academic Integrity Guide.

**Media**

Downloading or sharing music, videos, or any other copyrighted media without legally purchasing it or without the owner’s permission is a violation of copyright law and the Digital Millennium Copyright Act (DCMA). This behavior, therefore, is subject to legal action which may include substantial fines and criminal prosecution.

FM is required by the Higher Education Opportunity Act of 2008 (HEOA) to take steps to combat unauthorized distribution of copyrighted materials; information on these steps can be found in the Institutional Technology section of this document.
As an alternative to illegal peer to peer sharing of copyrighted works, students can visit The Evans Library’s
Copyright Guide to obtain a list of websites where students can legally have access to copyrighted videos, music,
and images.

Ownership of Creative Work
When a person creates a work, the finished copy is automatically protected under copyright law. While
students are not required to register a work for copyright protection, it does provide certain benefits.
Registration also allows the owner to “establish a public record of the copyright claim” and claim copyright
infringement if their work is used without permission.

If you create physical or digital work, please consider registering your work by visiting the United States
Copyright Office website.

Students can also attach a Creative Commons license to their finished digital work. A Creative Commons
license provides content creators with “a simple, standardized way to grant copyright permissions to their
creative work.”

Photocopying
The Evans Library does not copy/make reproductions for students. However, photocopiers and scanners are
provided for student self-use and, under limited circumstances, it is permissible to photocopy copyright-
protected works in The Evans Library without obtaining permission from the copyright owner. As
recommended by Section 108 of the Copyright Act, the library displays the register’s notice at public
photocopiers and scanners.

Photocopying by students as outlined above is subject to a fair use analysis. A single photocopy of a portion of
a copyright-protected 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, all require permission from the copyright holder.

REVIEW & INTERPRETATION OF POLICY

This policy will be reviewed on a six (6) year cycle commencing upon the official approval and acceptance by
the FM Board of Trustees.

For interpretation of and further information on this policy, please see the campus copyright officer.
RESOURCES

Campus Copyright Officer
Mary Donohue, Professor & Evans Library Director
Phone: 518.736.3622 x8050
Email: mdonohue@fmcc.edu
Acting Campus Copyright Officer, September 2015–Present

Copyright
- The Basics of Getting Permission—
  http://fairuse.stanford.edu/overview/introduction/getting-permission/
- Copyright Circulars and Factsheets—http://www.copyright.gov/circs
- Copyright Law Section 110 (2)—https://www.law.cornell.edu/uscode/text/17/110
- U.S. Copyright Act—http://copyright.gov/title17/circ92.pdf

Tools
- Copyright Term and the Public Domain (chart)—
  https://copyright.cornell.edu/resources/publicdomain.cfm
- Digital Copyright Slider—http://www.librarycopyright.net/resources/digitalslider
- Public Domain Slider, Section 108 Spinner, and Fair Use Evaluator, American Library Association—
  http://www.ala.org/advocacy/copyright-tools

Fair Use
- The Fair Use Provision: Copyright Act at Section 107—http://www.copyright.gov/title17

Tools
- Checklist for Conducting a Fair Use Analysis—
  http://copyright.cornell.edu/policies/docs/Fair_Use_Checklist.pdf
- Copyright Basics: Fair Use Checklist—
  http://www.copyright.com/Services/copyrightoncampus/basics/fairuse_list.html
- Fair Use Evaluator—http://librarycopyright.net/resources/fairuse/

Other Copyright Laws, Rules, and Regulations
- Higher Education Opportunity Act of 2008—
- TEACH Act—http://www.copyright.gov/docs/regstat031301.html
Resources for Administration

- The Evans Library Copyright Guide— [http://libguides.fmcc.edu/facultystaff/copyright](http://libguides.fmcc.edu/facultystaff/copyright)
- FM Academic Integrity Policy— [http://www.fmcc.edu/academics/programs/academic-integrity-policy/](http://www.fmcc.edu/academics/programs/academic-integrity-policy/)
- FM Appropriate Use Guidelines & Procedures— [https://ss.fmcc.edu/policy/](https://ss.fmcc.edu/policy/)
- HEOA Provisions—

Resources for Faculty

- A Map of Use Issues, University of Minnesota— [https://www.lib.umn.edu/copyright/usemap](https://www.lib.umn.edu/copyright/usemap)
- Blackboard Best Practice: Copyright— [http://wiki.sln.suny.edu/download/attachments/20515214/Best+Practice_+Copyright.pdf?version=1&modificationDate=1398719644089](http://wiki.sln.suny.edu/download/attachments/20515214/Best+Practice_+Copyright.pdf?version=1&modificationDate=1398719644089)
- College Senate Resolution to recognize the use of OER at FM— [https://fulmont.sharepoint.com/administration/senate/Documents/2014-2015%20College%20Senate/Resolutions/Approved%20OER%20Resolution.pdf](https://fulmont.sharepoint.com/administration/senate/Documents/2014-2015%20College%20Senate/Resolutions/Approved%20OER%20Resolution.pdf)
- Creating Coursepacks—
  - Raider Trader— [http://www.fmcc.edu/about/bookstore/](http://www.fmcc.edu/about/bookstore/)
- Creative Commons— [http://www.creativecommons.org/](http://www.creativecommons.org/)
- Obtaining Creative Commons Licenses— [http://creativecommons.org/licenses/](http://creativecommons.org/licenses/)
- Open Educational Resources Definition— [http://www.hewlett.org/programs/education/open-educational-resources](http://www.hewlett.org/programs/education/open-educational-resources)
- Open Educational Resources, Northern Virginia Community College— [http://eli.nvcc.edu/oer](http://eli.nvcc.edu/oer)
- Public performance licenses can be obtained at the following websites:
- Registering physical or digital work with the United States Copyright Office— [http://copyright.gov/eco/](http://copyright.gov/eco/)
- Teach Act Best Practices using Blackboard— [http://www.ala.org/advocacy/copyright/teachact/teachactbest](http://www.ala.org/advocacy/copyright/teachact/teachactbest)
• The Copyright Crash Course, University of Texas at Austin—http://copyright.lib.utexas.edu/

Tools

Resources for Students
  • Interlibrary Loan CONTU Guidelines—https://www.copyright.com/Services/copyrightoncampus/content/ill_contu.html
  • Plagiarism Resources:
    o The Evans Library Academic Policy and Plagiarism Guide—http://libguides.fmcc.edu/students/integrity
    o The Online Writing Lab Plagiarism Guide, Purdue University—https://owl.english.purdue.edu/owl/resource/589/01/
    o Student Plagiarism Resources—http://www.web-miner.com/plagiarism#students

REFERENCES

In addition to documents listed in the Resource section above, the following materials were extensively utilized in the creation of this document:

