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## GUIDELINES FOR COPYRIGHT COMPLIANCE AT ATHENS STATE UNIVERSITY

### I. Purpose

The purpose of this document and the guidelines within are to provide summary information related to federal copyright law. The information presented is intended to assist members of the University community in being aware of copyright law and achieving compliance with the law as it applies to an institution of higher learning, and compliance with University policies related to the use of copyrighted materials and the ownership of intellectual property (see the University policy [Copyright Compliance: Use of Copyrighted Materials and Intellectual Property: Ownership of Created Works](#)).

**This document has no legal standing – the intent of these guidelines is simply to provide relevant information and practical advice for individuals who may be considering using copyrighted materials in a learning, teaching or research context while attending or employed by Athens State University. Individuals are encouraged to visit the website of the U.S. Copyright Office ([United State Copyright Office](#)) for additional information, or seek appropriate legal advice when necessary.**

### II. Copyright Fundamentals

Article I, Section 8 of the United States Constitution states that the Congress shall have 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...” Effective January 1, 1978, Congress enacted the Copyright Act of 1976, which was a comprehensive revision of the copyright law found in title 17 of the United States Code prior to 1976, and provides the framework for current copyright law. This revision and subsequent amendments to the law have provided for interpretations of the law that address advances in technology and digital communications.

In general, copyright is a form of protection for individuals who are the authors or creators of “original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device” (U.S.C. title 17, §102). Such works include:

- literary works;
- musical works, including any accompanying words;



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- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- pictorial, graphic, and sculptural works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Copyright protection can also extend to “compilations”, which either collect or assemble preexisting materials (e.g., publishing an article in a journal), and to “derivative works”, which are works based on preexisting works (e.g., a movie based on a book). Copyright protection does **not** exist for ideas, data, facts, concepts, principles, processes, or procedures described or explained in the works.

In general, the protections granted by copyright law to authors or creators are the exclusive rights to reproduce, distribute, and publicly perform or display their works, and to provide the ability for the authors or creators to benefit monetarily and otherwise from the use of their works. Copyright also extends to authors of works of visual art “rights of attribution and integrity”, among which is the right to prevent persons from using the author’s name in association with works that the author did not create.

The protections under copyright law are in effect from the time the work is created in a fixed form, and the copyright immediately becomes the property of the author who created the work. Exceptions may exist for a “work made for hire”, which may assign copyright to the employer of an employee who created the work unless there is an agreement to the contrary. Authors of a joint work are co-owners of copyright unless there is an agreement to the contrary. Copyright to a separate contribution in a periodical or journal belong to the author of the contribution, and is distinct from the copyright for the collective work as a whole, unless there is an agreement to the contrary.

No action is required of a work’s creator to secure copyright, although registration is frequently recommended. The requirement to place a copyright notice on a work was eliminated in 1989, although it is recommended since it reminds possible users that the work is protected.

The duration for protection under copyright varies, depending on the creation date and country of origin. However, in the United States, for a work created on or after January 1, 1978, the work is protected from the moment of creation for the author’s lifetime plus 70 years after the author’s death. For a joint work, this is understood as 70 years after the last surviving author’s death. The duration of copyright for a work made for hire created on or after January 1, 1978 is either 95 years from publication of the work or 120 years from creation of the work, whichever is shorter.



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### III. Fair Use

The provision for “fair use” is perhaps one the most important (and sometimes misinterpreted) portions of the Copyright Act when considering the use of copyrighted materials in an educational setting. As specified in title 17 §107, fair use generally refers to the reproduction of a copyrighted work for the purpose of criticism, comment, news reporting, teaching, scholarship, or research. When used for such purposes, reproduction of a work may not be an infringement of copyright. To determine whether reproduction falls under fair use, four factors must be considered:

- the purpose of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion of the copyrighted work being used in relation to the work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

Note that fair use generally refers to reproduction of copyrighted works (for example, photocopying): title 17 §110(1) gives instructors or students considerable latitude in the performance or display of works in the context of face-to-face teaching activities at a non-profit educational institution such as Athens State University.

Fair use is not an exception to compliance with copyright law, but it may provide a defense against a claim of copyright infringement. However, determining fair use in a particular situation is not always straightforward – there is no specific amount of a work that may safely be used without permission, and the Copyright Act does not spell out the specific types of content reproduction that qualify as fair use. In addition, acknowledging the source of the copyrighted material is not a substitute for obtaining permission.

In general, Athens State University considers the following as acceptable examples of fair use:

- Quotation of short passages of a copyrighted work in scholarly or technical work, when the purpose of the use is to illustrate or clarify the author’s observations.
- Spontaneous and unexpected reproduction by instructors or students of material for classroom or research use, such as reproducing a recent newspaper or journal article when the article is relevant to a class or research topic. This would generally cover one-time use during only one semester.
- Use of short portions of a work in a parody.
- A summary of an address or article, which may include quotations of short passages of the copyrighted work.



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It is the expectation of the University that all individuals reproducing copyrighted materials in one of the above instances give citations for the work(s) quoted and/or reproduced as appropriate.

If reproduction of a copyrighted work is planned in advance and is repeated from semester to semester in a class, the user is generally expected to obtain copyright permission prior to reproducing the work.

In the online and distance learning environments, individuals must take particular care when considering reproduction and use of materials found online. **A user should never assume that any material found online is free to reproduce and use in a class.**

#### IV. Copyright and Online Distance Learning

Enacted in 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act amended sections of the U.S. Copyright Act with respect to the use of copyrighted works in online distance learning and in displaying or distributing works in an institution's course/learning management system. In short, the revisions to copyright law due to the TEACH Act, particularly in title 17 §110(2), facilitate and enable the performance and display of copyrighted materials for distance education by an accredited, non-profit educational institution, provided the institution meets specific requirements.

Among these requirements are:

- The performance or display must be a regular part of systematic mediated instructional activity, made by, at the direction of, or under the supervision of the instructor.
- The performance or display must be directly related and of material assistance to the teaching content.
- The performance or display must be limited to the students enrolled in the class.
- Only reasonable and limited portions, such as might be performed or displayed during a typical face-to-face class session, may be used.
- The institution must have developed and published copyright policies and must give notice that materials used in connection with the course may be protected by copyright.
- The institution must apply technological measures that reasonably prevent recipients from retaining the works beyond the class session and further distributing them.
- The institution must not interfere with technological measures taken by copyright owners that prevent retention and distribution.



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The exemptions provided by the TEACH Act do **not** extend to course packs, textbooks or other digital content provided under license by an author or publisher, or to the conversion of materials from analog to digital formats, except when the converted material is used solely for authorized performance or display, and when a digital version of the work is unavailable.

Faculty members should be aware that the provisions of the TEACH Act do not supersede fair use: if performance or display of a copyrighted work is planned in advance and is repeated from semester to semester in a course on the University's Learning Management System (LMS), the user is generally expected to obtain copyright permission prior to using the work.

**Students should be aware that any materials used in connection with a course on the University's LMS may be subject to copyright protection, and should not be retained for purposes outside the course or further disseminated without permission. The University requires every course (regardless of delivery format) syllabus to include the following statement:**

**The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated. The materials on this course website may be protected by copyright; any further use of this material may be in violation of federal copyright law.**

## **V. The Digital Millennium Copyright Act**

The Digital Millennium Copyright Act (DMCA), passed in 1998, amended the Copyright Act to address issues related to digital copyright. The DMCA contained provisions that forbid the circumvention of digital protections on copyrighted material. In addition, the DMCA provides some limitations on liability for University networks that function as Internet service providers (ISPs), provided certain requirements are met. To be eligible for the limitations, an institution must:

- Appoint a designated agent to receive reports of copyright infringement, and register the agent with the U.S. Copyright Office.
- Promptly comply with "take down" requests from copyright holders or their agents.
- Develop and publish a copyright policy, and take steps to educate the campus community about copyright.
- Apply measures to protect against unauthorized access to content and dissemination of information.
- Use only lawfully acquired copies of copyrighted works.



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All users of the University computer networks and systems should be aware that copying, distributing, and downloading copyrighted materials, including music, videos, and games, for which the user does not have permission, are violations of federal law. Federal law provides for severe civil and criminal penalties for unauthorized reproduction, distribution, or electronic/digital transmission of copyrighted materials. The University reserves the right to employ technology-based deterrents, including but not limited to traffic monitoring, accepting and responding to Digital Millennium Copyright Act (DMCA) notices, and commercial products designed to reduce or block illegal file sharing. The aim of these deterrents is to inhibit the unauthorized distribution of copyrighted material by users of the University's network without unduly interfering with educational and research use of the network.

As required by the DMCA, Athens State University has appointed the University's Library Director as the University's agent to receive notification of a claim of infringement from a copyright owner or the owner's designated agent. Any individual who suspects that a member of the University community is using or distributing copyrighted material without permission should report the suspected infringement to the University agent.

A list of [legal alternatives for downloading](#) is maintained by EDUCAUSE, a non-profit association whose mission is to advance higher education through the use of information technology.

## **VI. Obtaining Permission for the Use of Copyrighted Material**

Once a need is identified, copyright permission may be requested either directly from the copyright holder or through a licensing agent such as the Copyright Clearance Center (generally for a fee – see Additional Resources below). Contacting the copyright holder directly can be a time-consuming process, assuming that the copyright holder can be identified and located. While the Copyright Office can conduct searches (some online search tools are available at the Copyright Office website), searches can only yield results for works that have been registered (recalling that copyright registration is not required to secure copyright protection).

In general, a permission request should include:

- The user's name, address, telephone number and e-mail address.
- The user's title, position and institution's name.
- The date of the request.



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- The title of the work to be copied with a description and citation of that work.
- A description of how the work is to be used, by whom and for how long.
- A signature line for the copyright holder to sign, signifying that permission has been granted.

**It is important to note that a lack of response from a copyright holder does not, under U.S. law, convey permission.** Works may also contain materials (such as text, images and graphics) from multiple copyright holders that may require separate authorization from each one. In addition, as discussed under the Fair Use section of this document, simply acknowledging the source of content is not a substitute for copyright permission.

## VII. Summary of Civil and Criminal Penalties for Copyright Infringement

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act. These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or “statutory” damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For “willful” infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys’ fees. Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. Additional details can be found in title 17 § 504, 505 and at the website of the U.S. Copyright Office ([United States Copyright Office](#)).

## VIII. Additional Resources

Athens State University encourages faculty to use Open Education Resources in their courses. Please see the [Open Educational Resources](#) policy for further information.

There are many diverse online resources related to copyright issues. However, as with any topic, some online sources are more accurate and dependable than others. While nowhere near an exhaustive list, the resources listed below are believed to be reputable sources that may be used in finding helpful and accurate information related to copyright issues.



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- [United States Copyright Office](#)– The website for the United States Copyright Office has links to the entire text of copyright law, as well as to information on copyright basics, search tools for copyright records, and much more.
- [Copyright Advisory Network of the American Library Association Office](#)- The website for the Copyright Advisory Network of the American Library Association Office for Information Technology Policy provides a variety of resources to assist individuals in learning about copyright. The site includes a link to an online Fair Use Evaluator, which can help individuals in deciding if fair use applies to a particular situation.
- [Copyright Clearance Center](#) - The website for the Copyright Clearance Center provides links to many resources related to copyright education. The Center also provides annual or pay-per-use services for licenses to use copyrighted works.