

MIDDLESEX COMMUNITY COLLEGE
COPYRIGHT AND INTELLECTUAL PROPERTY POLICY

PURPOSE AND SCOPE

This policy provides guidance regarding the use and creation of intellectual property at Middlesex Community College. While the definition of intellectual property is broad and can include works of authorship, computer software, inventions, discoveries, creations, know-how, trade secrets, technology, scientific or technological developments, and research data, regardless of whether subject to legal protection, this policy will focus on that intellectual property at the College which is most likely to be used such as copying copyrighted materials for classroom instruction or course materials, performances and displays in the classroom and distance learning environments, as well as created. This policy will address when it is necessary to obtain authorization to use intellectual property, as well as who owns the rights to intellectual property created at the College.

It is the responsibility of all faculty, staff, students and anyone using the facilities or resources of Middlesex Community College to read, understand and follow this policy. Any person with questions regarding the application or meaning of this policy should seek clarification from the Chief Academic Officer. Failure to observe this policy may subject individuals to disciplinary action pursuant to applicable handbooks or collective bargaining agreements, up to and including expulsion from the College or termination of employment,. Further, failure to observe this policy may result in violation of civil and/or criminal laws.

DEFINITIONS

Copyright – The exclusive right of an author to reproduce and create derivative works from, distribute, perform, display, sell, lend or rent original works of authorship that are fixed in a tangible medium which are not in the Public Domain and thus, protected under United States Copyright Law Title 17 of the U.S. Code, including literary, musical and dramatic works as well as computer software teaching materials, multimedia works, proposals and research reports, books, articles, study guides, syllabi, workbooks, manuals, bibliographies, instructional packages, tests, video or audio records, films, slides, transparencies, charts, graphic materials, photographic or similar visual materials, film strips, multi-media materials, three dimensional materials, exhibits, software, and databases.

Covered Individuals – All individuals employed by the College, enrolled at the College, attending classes at the College, and/or using the facilities or resources of the College (e.g. community members) are subject to this policy.

Intellectual Property – Includes, but is not limited to, any works of authorship, computer software, invention, discovery, creation, know-how, trade secret, technology, scientific or

technological development, research data, regardless of whether subject to legal protection such as copyright.

Public Domain - The status of publications, products, and processes that are not protected by copyright; for example, materials on which the copyright has expired and works created by the federal government or a state government.

Work Made for Hire – Pursuant to Section 101 of Title 17 of the U.S. Code, “(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work,¹ as a compilation, as an instructional text,² as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument that the work shall be considered a work made for hire.”

COMPLIANCE WITH COPYRIGHT AND INTELLECTUAL PROPERTY LAWS

It is the policy of Middlesex Community College to acknowledge and abide by all applicable intellectual property laws, including but not limited federal copyright law, Title 17 of the U.S. Code as amended at <http://www.copyright.gov/title17>.³ The College expects that all individuals employed at the College, enrolled at the College, and/or using the facilities or resources of the College (“Covered Individuals”) shall do the same.

In addition to issuing, and educating the College community regarding, this policy, the College will, among other things, ensure that every photocopy machine and printer and other equipment capable of creating copies on campus shall include effective signage incorporating the following text:

¹ A “supplementary work” is “a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.”

² An “instructional text” is a “literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.”

³ Since its passage in 1976, the Copyright Law has been amended numerous times by, for example, the Digital Millennium Copyright Act in 1998 and the Technology, Education, and Copyright Harmonization Act (“TEACH Act”) in 2002. These amendments outline the copyright requirements for digital content and online distance education addressed in this policy. Additional information regarding these amendments can be found in the appendices to this policy.

Notice: The copyright law of the U.S. (Title 17 of the U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

The College has also designated an "Agent to Receive Notification of Claimed Copyright Infringement." Anyone who believes that any faculty, staff, or student of the College has infringed on their rights as a copyright owner should contact the Chief Academic Officer, as the College's Copyright Agent, with the following information:

- Complete name, mailing address, email address, phone and fax numbers;
- Information about the copyrighted material (URL, book title, etc.);
- The URL of the College site which has the infringing material; and
- Any other information supporting the claim.

With regard to Distance Learning, the College will apply measures to protect against unauthorized access (e.g. limiting transmission to students enrolled in a particular course) and requires that only lawfully acquired copies of copyrighted works are used.

USE OF INTELLECTUAL PROPERTY: COPYRIGHT

Much of the existing works, information, or materials used at the College, whether written or electronic are copyright protected. Copyright protection vests automatically in original works of authorship that are fixed in a tangible medium of expression which are not in the Public Domain. Copyrighted materials can include literary, musical and dramatic works as well as computer software teaching materials, multimedia works, proposals and research reports, books, articles, study guides, syllabi, workbooks, manuals, bibliographies, instructional packages, tests, video or audio records, films, slides, transparencies, charts, graphic materials, photographic or similar visual materials, film strips, multi-media materials, three dimensional materials, exhibits, software, and databases.

Works in the Public Domain include those created by the federal or a state government and copyrighted works where the copyright has expired. Public accessibility to the works such as via the Internet does not mean that the works are in the Public Domain. To the contrary, much of the materials on the Internet are copyright protected. Since copyright laws protect many materials, and it is difficult to determine whether a work is in the Public Domain, Covered Individuals should assume that the materials they seek to use, for example, in connection with course preparation, course presentation or course materials, are copyrighted works.

Please note that if anyone who is not the copyright owner reproduces, distributes, performs, displays, and/or makes derivative works from copyrighted materials it is an infringement of the copyright owner's rights and the person infringing may be liable for damages to the copyright owner as well as criminal penalties. Accordingly, any time a Covered Individual uses a copyrighted work, either in whole or in part, proper authorization must be obtained from the copyright owner (which can include written

consent as well as the payment of a fee) unless one of the exceptions listed below applies. Additionally, Covered Individuals should clearly and prominently acknowledge the copyright owner on, or next to, the copyrighted work along with the following notice:

This material is protected by federal copyright law (Title 17 of the U.S. Code) and thus, copying of the material is prohibited by federal law.

OBTAINING AUTHORIZATION TO USE A COPYRIGHTED WORK

Obtaining authorization from a copyright owner to use a copyrighted work is usually not difficult but in some cases, may involve payment of a fee. The Association of American Publishers suggests that the following information be sent to the copyright owner (and/or to the publisher), with a self-addressed stamped envelope, to expedite the approval process:

- Title, author and/or editor, and edition of materials to be duplicated.
- Exact material to be used, giving amount, page numbers, reels, cassettes, chapters and, if possible, a photocopy of the material.
- Number of copies to be made.
- Use to be made of duplicated materials (including time period or duration if copying on an on-going basis is desired).
- Form of distribution (classroom, newsletter, etc.).
- Whether or not the material is to be sold.
- Type of reprint (photocopy, offset, typeset, reproduced [media]).

It is advisable to allow sufficient lead time to obtain authorization prior to use. In some instances the copyright holder may assess a fee for permission, which may be passed on to students who receive copies of the copyrighted material.

Depending on the type of copyrighted material (e.g. poetry, music), permission may also be obtained (for a fee) by contacting organizations such as the Copyright Clearance Center, Films for the Humanities & Sciences, Harry Fox Agency, Motion Picture Licensing Corporation, Recording Industry Association of America, and The American Society of Composers, Authors and Publishers.

WHEN AUTHORIZATION IS NOT REQUIRED

Covered Individuals do not need to obtain prior written permission from the copyright owner to use copyrighted materials if use falls under one of the exemptions listed below. Additional guidance and resources are included in the appendices to this policy.

Fair Use Exemption

Copyright law does allow limited copying, distribution, and display of copyrighted works without the copyright owner's permission for purposes such as criticism, comment, news reporting, teaching (including multiple uses for classroom use), scholarship and/or research under certain conditions known as "fair use." Copyright law does not specify what qualifies as of "fair use" but rather provides four interrelated factors which must be considered every time a Covered Individual seeks to use copyrighted material to evaluate whether the use (e.g. copying, distribution) falls within the limited exemption of fair use. The four factors that must be considered on a case-by-case basis are as follows:

- The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes.

Nonprofit educational uses are more likely to be considered fair while commercial uses will likely be an infringement. Duplicating and distributing small portions of copyrighted materials for specific nonprofit educational purposes has been considered to be fair use.

- The nature of the copyrighted work.

For example, use of published non-fiction (e.g. encyclopedias) is more likely to be considered fair while use of unpublished fiction will likely be an infringement. Commercial audiovisual works and consumable workbook materials are less likely to be considered fair than use of many printed materials.

- The amount and importance of the portion of the copyrighted work used.

Use of extracts which are small relative to the whole work and which do not capture the "essence" of the work are more likely to be considered fair.

- The economic effect of the use on the copyright owner

If copying or distributing the work does not reduce sales of the work then the use is more likely to be considered fair.

Please note that not all educational uses will qualify as "fair use" and that the concept of "fair use" provides limited exemption and does not allow for the wholesale copying and distribution of copyrighted work for educational or any other purpose without permission. Moreover, when in doubt if use qualifies as "fair use," permission from the copyright holder should be obtained.

Special Library Exemption

Copyright laws allow libraries to exercise special rights in addition to “fair use” such as archiving lost, stolen, damaged or deteriorating works, making copies for library patrons, and, in some cases, making copies for other libraries’ patrons (inter-library loan).

Special Classroom Exemption

Copyright laws allow faculty and instructors to use copyrighted materials in the classroom, including distance learning environments, without obtaining permission, for example, in performances of non-dramatic literary and musical works or displays of print materials over the internet as part of a class session in a distance learning course. This special classroom exemption only applies if:

- The display or performance is done by, at the direction of, or under the actual supervision of an instructor, as an integral part of a class session, an integral part of a class session as part of systematic mediated instructional activities and is directly related and of material assistance to the teaching content.
- Transmission is made solely for and reception limited to (as technologically feasible) students enrolled in the course, and technological measures are in place to limit access to enrolled students and reasonably prevent download and further distribution of materials.
- There is no interference with copyright holder's technological measures that prevent such retention and dissemination

The special classroom exemptions do not cover:

- Digital educational works - works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks
- Unlawful copies - copies which are known (or reasonably should have been known) to be unlawfully made or acquired)

Please note that copyright law allows the conversion of print or analog material into digital formats if no digital version is available or an available digital version is protected by technological measures.

GUIDELINES FOR USE OF COPYRIGHTED WORKS AT THE COLLEGE

Below are some illustrations of typical educational uses of copyrighted works at the College which are unlikely to require the copyright owner’s permission if this policy and these guidelines are followed as use will likely fall into one of the exemptions listed above. Even if a determination is made that an exception applies and permission of the

copyright owner is not required for use of copyrighted material, Covered Individuals still have limitations on use as outlined in this Policy and below. Additionally, Covered Individuals should clearly and prominently acknowledge the copyright owner on, or next to, the copyrighted work along with the following notice: *“This material is protected by Title 17 of the U.S. Code and thus, copying of the material is prohibited by federal copyright law.”* Please also refer to the appendices of this policy for additional guidance and copyright resources, including, but not limited to other examples where educational uses may be permissible without permission from the copyright owner. These resources may be particularly helpful where Covered Users seek to use copyrighted works in newer forms of technology (e.g. podcasting, PowerPoint). Please note however that this policy and federal copyright law applies to all uses of copyrighted materials, irrespective of technology. Non-digital content that is protected by copyright is also protected in digital form. Additional guidance and resources are included in the appendices to this policy such as “Questions & Answers on Copyright For the Campus Community” at http://www.elac.edu/collegeservices/doc/PC-029-08-06-CopyrightQA_v3.pdf

Single Copy for Classroom Use

A single copy may be made by, or for, a faculty member or instructor, for his or her scholarly research or use in teaching or preparation to teach a class, of all or part of the following: a chapter from a book, an article from a periodical or newspaper; a short story, short essay or short poem, whether or not from a collective work or a chart, graph, diagram, drawing, cartoon, picture from a book, periodical, or newspaper.

Multiple Copies for Classroom Use, including Course Packets

Multiple copies (not to exceed in any event more than one copy per student per course) may be made by, or for, the faculty member or instructor giving the course for classroom use or discussion, provided that the copying meets the tests of brevity and spontaneity and cumulative effect and each copy includes a notice of copyright. Students may not be charged except to recover copying costs.

Works which meet the brevity test are as follows:

- Poetry – a complete poem (or an excerpt from a poem) if less than 250 words and if printed on not more than two pages.
- Prose – a complete article, story or essay of less than 2500 words or an excerpt from any prose work of not more than 1,000 words or 10% of the work whichever is less but a minimum of 500 words.
- Illustration: one chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.

A work passes the spontaneity test if the copying is at the instance and inspiration of the individual instructor, and 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 to copy.

To meet the cumulative effect test, the copying of the material must be for only one course: and 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. Cumulative effect prohibits more than nine instances of such multiple copying for one course during a class term.

Notwithstanding the above, the following copying is prohibited without authorization from the copyright owner:

- Copying for the purpose of creating, replacing, or substituting for anthologies, compilations or collective works.
- Copying of works intended to be “consumable” in the course of study or teaching, such as workbooks, exercises, standardized tests and test booklets and answer sheets.
- Copying as a substitute for the purchase of books, publishers’ reprints or periodicals.
- Repeated copying of the same item by the same teacher from term to term.

Faculty and staff should follow the guidelines above for copying course packets or research materials. Please note that permission of the copyright owner must be obtained for materials that will be used in more than one semester by the same professor for the same class. Copyright notices should include appropriate citations and attributions to the source.

Library Course Reserves

A faculty or staff member may want to have materials on reserve at the library as part of the course materials, including classroom assignments. Library course reserves, whether physical or electronic, are intended to provide supplemental material to courses of instruction at the College. As such, materials placed on reserve (for example disks, audio-visual materials, journal articles and/or photocopies, electronic resources, and non-book items) are not intended to comprise the core of a course’s instructional material, but rather to augment it. The library will conduct a fair use analysis described in this policy and limit reserves to lawfully acquired copies of single articles or chapter, or other small portions of a work or originals of an entire work. Copies must include the notices and acknowledgements listed above and access will be limited to students enrolled in the class and will terminate at the end of the class. When the material requested for reserve exceeds what might be permitted under fair use, permission from the copyright holder

must be obtained. Please note that placing a lawfully obtained textbook on reserve is permissible

Network access, including World Wide Web access, to the College-created digitized study collections that include copyrighted material, is restricted to the College's campus network and those authorized to use the network. Such digitized collections are accessible temporarily and for instructional purposes only by the students and faculty for whom the material is intended. These collections should be removed at the end of the academic term in which they were being used. Prominent notice must be given that such study materials may not be downloaded, retained, printed, shared, or modified, except as needed temporarily for specific academic assignments.

The use of a course management system (i.e. BlackBoard, Moodle, Angel) offers the capability to provide controlled access to electronic forms of class material. The College's libraries provide access to a number of databases by subscription agreement with vendors. In many cases the license agreements with the vendors or publishers of these materials specifically address whether or not content may be downloaded and reposted to an electronic reserves system. Since the answer to this question is uneven and there are many licenses to consider, the College's libraries will link to any database or eJournal content, rather than downloading the document and uploading it for online access (i.e. BlackBoard, Moodle, Angel).

Digitizing and Using Copyrighted Works in Multimedia Materials for Educational Purposes

Covered Individuals may seek to incorporate copyrighted works into multimedia materials and display and perform a multimedia work in connection with, or the creation of, class assignments, curriculum materials, remote instruction, examinations, student portfolios, or professional symposia. Covered Individuals may incorporate copyrighted works into a multimedia work if the amount of material from the copyrighted work is a very small amount, if copies of the multimedia work are limited to those required to achieve the educational purpose, and if the multimedia work is used for the purpose for no longer than two years (in which case permission from the copyright owner is required). The copyright notices and acknowledgements listed above must also be included.

Digitizing and Using Images for Educational Purposes

Covered Individuals may seek to use images during their class, for example art images for an art history class. Images should only be used with permission from the owner of the copyright in the image. Many images are readily available online or for sale or license at a fair price. If the image is not readily available online or for sale or license at a fair price, Covered Individuals should limit access to all digitized images (except small low resolution "thumbnails") to students enrolled in the class and administrative staff as needed and should terminate access to the images at the end of the class term. Periodically review digital availability. If a previously unavailable image becomes

available online or for sale or license at a fair price, it should be acquired before using again.

Distance Learning

A faculty or staff member may display and perform copyrighted works in live interactive distance learning classes, course management systems or in delayed transmission of faculty instruction as follows: the faculty or staff member or the College must own a legal copy of the source (e.g. book purchased in bookstore). Before purchasing materials for Distance Learning Courses, determine whether the applicable licenses provide authority for use of display and performance of the materials without restrictions. If so, a small portion of the Copyrighted materials may be used for a limited time, and with limited access along with the notices and acknowledgements listed above.

Music

A faculty or staff member may copy music for academic purposes, other than performances, limited as follows: 1) excerpts of sheet music, such as performable units (movements, sections, arias) may be copied only if out of print; 2) student performances may be recorded only for teacher or institutional evaluation or student's portfolio, and 3) sound records may be copied once for classroom or reserve room use. Please note that sheet music may be copied in its entirety only for an emergency when purchased copies are not available for an imminent performance provided that purchased replacement copies are substituted in due course. Additionally, the copyright notices and acknowledgements outlined above must be included. There are also sources of free music such as the Choral Public Domain Library. http://www.cpd.org/wiki/index.php/Main_Page.

Public Performance

Copyright law governs how copyrighted materials used for a public performance, such as movies, may be used. Neither the rental nor the purchase of a video carries with it the right to show the video outside the home. In some instances no license is required to view a video, such as inside the home by family or social acquaintances and in certain narrowly defined face-to-face teaching activities. Taverns, restaurants, private clubs, prisons, lodges, factories, summer camps, public libraries, day-care facilities, parks and recreation departments, churches and non classroom use at schools and universities are all examples of situations where a public performance license must be obtained. This legal requirement applies regardless of whether an admission fee is charged, whether the institution or organization is commercial or non-profit, or whether a federal or state agency is involved.

Copyright law allows faculty members and instructors to share audio-visual work (e.g. video, VHS tape, laserdisc, DVD movie, 35 mm slide, filmstrip, or 16 mm movie), works with students in face-to-face teaching situations only. Even programs purchased or rented with the caveat "home use only," may be used in face-to-face teaching activities. Such programs may not be used outside of the classroom, for example viewing at a student

club meeting, without licensing. Audio-visual works may not be transmitted to other colleges or locations without permission of the copyright holder. Accordingly, unless permission is received, distance education is an unlikely venue for the performance of audio-visual works.

Transmission of an audio-visual work may be permissible over closed circuit television to classrooms located within the same building. Besides use in classrooms, students, faculty or staff at workstations or in small group rooms such as those available in the library may view audio-visual works that are owned by the College. In similar situations, the performance of non-dramatic literary or musical works is permitted, if the performance or display is a regular part of systematic instructional activities, if it is directly related to teaching content of transmission, if the setting is normally devoted to instructional activities, or if it is sited to accommodate persons with disabilities.

Assuming the purpose is curricular and the setting is face-to-face, two additional criteria apply: (1) the performance of the audiovisual work must meet the instructional objective; and (2) the audio-visual work must be a "lawfully made" copy. Any other type of performance or display of an audio-visual work is potentially a copyright infringement.

Recording College Events

Permission to record presentations by registered students, faculty, and staff is assumed if the recording is to be used for archival or classroom use only. Written permission of the presenter or sponsor is required for presentations made by any other individual or group regardless of the recording's purpose. One archival copy of non-classroom events using copyrighted materials may be produced if the presenter has obtained clearance from the copyright holder. Non-archival copies of presentations may only be produced if written permission allowing the duplication of the material has been obtained in advance from all

Off-Air Recording of Broadcast Programming for Educational Purposes

A broadcast program (including cable program) may be recorded off-air and retained for 45 calendar days after date of recording. Off-air recordings may be used once by individual faculty member or instructors in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary in classrooms and similar places devoted to instruction during the first 10 school days in the 45-day retention period. Off-air recordings may be made only at the request of and use by individual faculty and instructors and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of faculty and instructors under this policy. Each additional copy shall be subject to all provisions governing the original recording.

After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-day retention period only for teacher evaluation purposes (i.e. to determine

whether to including the broadcast program in the teaching curriculum and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization. After 45 days, a license for retention must be obtained or the recording must be erased or destroyed. Recordings need not be used in their entirety but may not be altered from their original content or physically or electronically combined or merged to constitute teaching anthologies or compilations. Recordings must contain the copyright notice on the broadcast program as recorded.

OWNERSHIP OF INTELLECTUAL PROPERTY

The author or creator of intellectual property is usually the owner of that intellectual property unless the intellectual property is a “work made for hire.” Copyright law (Section 101 of Title 17 of the U.S. Code) defines a “work made for hire” as:

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work,⁴ as a compilation, as an instructional text,⁵ as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument that the work shall be considered a work made for hire.

If the work does not fit the legal definition of “work made for hire” the employer may still own the intellectual property if it is created pursuant to a contract, collective bargaining agreement, or assignment of copyright.

⁴ A “supplementary work” is “a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.”

⁵ An “instructional text” is a “literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.”