

Note: The information provided in this document is for information and guidance only and may not be considered as legal advice. If you have specific issues or areas that need clarification, you are encouraged to consult with a qualified attorney.

## Using Copyrighted Material on the Web

Making definite statements about copyright in cyberspace, and what is and is not permitted has been compared to 'hammering nails into Jello™.' Web technology offers easy access, capacity, speed and global reach, which are real advantages for marketing and distributing creative property. Those same features pose problems for controlling access to and use of copyrighted material. This creates a serious conflict between the ideal of 'free access' to resources on the Web; and the need to control and protect material that belongs to another individual.

As a reminder, in current Copyright Law 'copying' includes:

- Work placed on computer disk, Zip disk, CDROM, or other storage device, or in RAM for more than a brief period of time.
- Printed work scanned to digital file.
- Digitized still images, motion, and sound media.
- Digital files uploaded to server and downloaded from server.
- Files transferred between network users.
- Dumb terminal access to files on computer.

Regarding E-mail, server access, web spaces: bulletin boards, discussion boards:

- Copyright of original materials remains with the writer. The receiver has no right to copy or further distribute the material against the writer's wishes.
- Users of a system (network, shared software, shared web site) may agree to waive their rights in exchange for access.

### **Businesses, publishers, distributors, museums and other copyright holders have two major concerns:**

1. The potential that you might infringe on their rights by incorporating copyrighted materials (from the Web or other 'published' sources), in your web sites, and
2. How you use the materials and resources they post to their web sites

### **As a student, your major concerns are:**

1. How to use the web-based resources you need for learning activities and projects without infringing, and
2. How to preserve the rights for original materials and resources you create and/or use on the web.

## **Myths about materials and resources on e Web:**

### **Myth #1: "If they put it up on the web, it is free for anyone to use."**

This is possibly the biggest. Despite discussions about free access, people put things on the web for many reasons. They may be perfectly happy to let you come to their site to see with the 'goodies' they have, but copying those materials for use elsewhere is another issue. In the scheme of things, 'downstream copying' is the major concern and copyright owners see it as a threat to their market. A second issue is the legality of the material itself. Was it posted to the site legally or is it a third or fourth generation infringement? Always look for copyright statements, or a statement of how and if you can use this material. Even sites that promote 'free download' will have some restrictions on the use. If you don't find directions on the site- contact the web master or author directly to ask for directions and request permission. **Never assume it's OK.**

### **Myth #2: "If I can use it in class, I can use it on the web."**

Wrong. Some provisions for student use of copyrighted materials in classroom, in multimedia projects and even some distance learning settings are provided in copyright law. But- digital copying and the use of copyright materials on the Web have been under debate since the mid 1990's. Most people in education believe Fair Use should be extended to include the Web and digital technology, but most of the copyright owners see this as a serious threat to the market. Right now, there is no legal basis for applying Educational Fair Use to the Web.

### **Myth #3: "If it's for educational use, I don't need to get permission."**

Educational use might offer some *moral* leeway- but it can't guarantee that you won't be charged with infringement. Copyright law and the guidelines for Fair Use did not anticipate the broad educational use of Web technology. Since most copyright owners are not convinced that educational uses are valid for the digital environment, their approach is much more conservative. As a result, a classroom-based use that would be acceptable Fair Use might be denied for a Web-based use. Until new guidelines or directives are developed and adopted, caution is the best approach

### **Myth #4: "If my course web site is password protected, there's nothing to worry about."**

Unauthorized viewing, listening or use of copyrighted material is one of the major concerns of copyright owners. They see it as a serious threat to the market for sales or licenses of the protected material: "If you can get the material free from John Doe's web site- why would you need to purchase or license your own copy?" Password protection is fairly effective in barring unauthorized users, but the majority of copyright owners don't have confidence in password protections. "If they can hack into the Pentagon's computers. . ."

### **Myth # 5: "They'll never know..."**

Don't be too sure. Awareness and concern about this issue grows with the release of each new technology. The recent DVD decoding issue and the Napster vs. Metallica cases are just two examples. Individual companies and rights agencies have increased monitoring efforts and they are more aggressive in pursuing legal action against infringement. Some organizations are more diligent than others in monitoring and may even hire people to surf and search for unauthorized infringements.

## What is the answer?

**Right now, there is no definitive answer.** In spite of lengthy discussion, conferences and recommendations, there are no clear guidelines for using copyrighted materials in digital formats for distance education activities, Internet applications, and the World Wide.

### So, the best recommendations are:

- Tread lightly. Since there are no specific guidelines, the best approach is the safe approach: Stay within the legal parameters. In effect, treat any intended distance education or web use of copyrighted material as if Fair Use did not exist! Ask for permission, get it in writing and keep the documentation on file.
- When possible use a hyperlink to a legal source for material on the Web, rather than copying it. Most sites will permit a hot link to the site, but not to a specific item. You are not required to request permission for the link, but it is good practice and courteous.
- If you're interested in using images or documents you find on a web site, search carefully! Even if the site says you can download the material, there may be limitations and restrictions on how much and where you can use it, or other conditions. Look for a copyright statement or policy. If you don't see one DON'T ASSUME IT'S OK. Send a message to the web master asking about their policy and where to direct a permissions request.
- If you need to post an item on your site try to get permission from the copyright owner in advance. The requests are usually decided on a case-by-case basis according to the policy of the owner. Some sources may grant permission without fee or restrictions, some may place time limits or other conditions, and others may charge a license fee. In all cases, get the decision and any terms spelled out in writing by the owner's authorized agent. A verbal OK isn't good enough - ask for documentation!

### Final Note: The Digital Millennium Copyright Act, 1998

U.S. Copyright Office Summary. Washington D.C., December 1998.  
Available from <http://cweb.loc.gov/copyright/legislation/dmca.pdf>

The Digital Millennium Copyright Act was signed on October 28, 1998 and provides a 'safe harbor' for online service providers (ISPs), stating that the provider can't be held liable for unknowingly transmitting copyrighted works for it's users. The DMCA also establishes specific guidelines for the ISP to remove material that appears to be an infringement.

### What this means to you:

- If the University is your ISP- it cannot be held liable for YOUR copyright infringement.
- When an infringement by a user is reported, the University has the obligation to require that user to remove the infringing item.
- Failure to do so can result in loss of Internet access and computing privileges.