The purpose of copyright law is to "promote the public welfare through the advancement of knowledge." The law also is intended to balance the rights of the author or copyright owner. While much of the law is definitive, some sections are left open to various interpretations.

Educators are bound by copyright laws and guidelines when using copyrighted materials in their teaching. Anything that is not in the public domain is protected by copyright law. Materials created by the U.S. Government are in the public domain as well as any materials whose copyrights have expired.

When using copyrighted materials without the permission of the copyright owner, educators must consider whether their use of those materials could put them at risk for a copyright violation. Distance educators may consider applying an educational use copyright exemption (TEACH) or applying fair use principles to their use of the material.

What is TEACH?

On November 2nd, 2002, the "Technology, Education and Copyright Harmonization Act of 2002" (the TEACH Act), (H.R. 2215), was signed into law by President Bush. TEACH redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education-including on websites and by other digital means without permission from the copyright owner and without payment of royalties. The entire text of the TEACH Act is available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ273.107.pdf

The following guidelines summarize some of the legislation of the TEACH Act with regard to using copyrighted materials in distance education without permission:

- Performances and displays must be "made by, at the direction of, or under the actual supervision of an instructor."
- The materials must be transmitted "as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities" of the educational institution.
- The materials used must be "directly related and of material assistance to the teaching content of the transmission."
- Works that are not permitted to be transmitted include materials that were produced primarily for instruction via digital networks. Course packs, textbooks, and other works that are typically purchased by students for use in one or more class sessions are also prohibited from being transmitted.
- Conversion of print or analog versions of works are only permitted if no digital version of the work is available or the digital version that is available is subject to technological protection measures that prevent its use for section 110(2) (of title 17, United States Code).
The TEACH Act is quite complex and there are many requirements that must be met by both institution and the faculty member before faculty can use the exemptions allowed by TEACH. *It may be more feasible for instructors to use traditional fair use principles in their distance education programs.*

**What is “Fair Use”?**

The purpose of “fair use” is to allow the use of limited portions of copyrighted material without having to obtain permission from the copyright holder.

There are four fair use factors that one must consider when using any materials that are not in the public domain:

1. The purpose and character of the use (Ex: Is the use non-profit educational use or commercial use?)
2. The nature of the copyrighted work (Ex: Is the used work a factual work or highly creative fiction?)
3. The amount of the work used (Ex: Are you using a small part of the work or the whole work?)
4. The effect of the use on the value of the work (Ex: Could your use of this work replace the sale of the copyrighted work?)

**What guidelines apply to using materials in distance education?**

There are no hard and fast rules about what is and isn’t fair use. Only the courts can decide if something is truly fair use. The following guidelines will help you to minimize the possibility that your use of copyrighted materials without permission would violate the fair use guidelines.

1. The course site must be accessible only to the students enrolled in the course. This is usually accomplished by passwording the site on which the course materials reside. The items used must also be removed from the site as soon as it is no longer needed for the lesson for which it was used.
2. There must be insufficient time to request permission prior to using materials in the course. For subsequent uses there should be sufficient time to request permission, so that should be done.
3. No more than 9 articles or 1/3 of the total works required (if they should exceed 9) for the course should be put on a web site for use in a course. No more than one of these articles should be taken from a single author. Not more than three articles can be from a single journal volume or any other work. If more is needed, permission should be obtained.
4. Copyrighted items used for teaching must be from a source owned by the instructor, department, or library of the Medical College of Wisconsin. For items that are not owned, permission must be obtained for their use.
5. There will be no fees charged to the students for use of the material.
6. The material used should be directly related to the course content and inclusion of the material shall not be directed by anyone other than the course instructor.
7. All materials used should include copyright notices.
What other tips do I need?

The following tips relate to common misconceptions that people have related to copyrighted materials:

- Passwording the site on which the materials are posted does not free the user from abiding by copyright law. These materials are still subject to all copyright laws.
- All materials may be copyrighted, whether they include a copyright notice or not. Items that are in the public domain ARE NOT protected by copyright law, but these are usually items that are old or were produced by the U.S. Government.
- No one has to register their work in order to be protected by copyright law. As soon as a work is in a fixed medium (i.e. written or recorded), it is protected by copyright law.
- Everything on the Internet is not necessarily free for everyone to use without asking permission.
- Preventing students from printing a document does not necessarily free you from the fair use guidelines related to copyright.
- Consider using coursepacks if permission to post materials electronically is denied by the copyright owner but permission is available for creating hardcopies of the same materials.
- Permissions can be obtained from the publisher or from various agencies including the Copyright Clearance Center (http://www.copyright.com/). Fees may apply.

Can my course include a link to copyrighted materials on another site?

Linking to resources such as MCW Libraries’ licensed electronic journal articles rather than copying them into an e-learning system is a good method for avoiding the concerns about the use of copyrighted materials without permission.

One issue with linking arises when you consider what you are linking to. If an educator has reason to believe that he/she is linking to a site which has illegally obtained the materials it makes available or has other concerns about the legitimacy of the web site to which the link is going, the link should not be made.

Where can I get more information?

For more information about copyright, see the Copyright Information page (under “Guides & Instruction”) of the MCW Libraries web site at http://www.mcw.edu/mcwlibraries/copyright.htm or contact MCW Libraries at (414) 955-8302 or asklib@mcw.edu.