

## Procedure Title: Copyright and Fair Use

**Impact:** Employees, Students, and all NIC Community Members

**Responsibility:** Accreditation Executive Committee

**Effective Date:** 02/26/2020

**Last Update:**

**Relates to Policy:** 2.03.04

**Legal Citation(s):** United States Copyright Law, Title 17, U.S. Code, 1976; The Fair Use Guidelines of 1997; the TEACH Act of 2002; the Digital Millennium Copyright Act

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### I. Procedure Narrative

The following procedure provides a guideline for applying and balancing the fair use factors provided by statute in the use of copyrighted materials. North Idaho College expects members of the college community to determine whether they should seek permission for a particular use or can depend upon the fair use exemption. The North Idaho College Library maintains informational materials and resources concerning copyright laws and fair use application in order to assist faculty, staff and students in the exercise of fair use rights.

Those seeking to use, reproduce, distribute, perform, or display copyrighted materials should consider the following four factors to determine whether the use falls within the fair use exemption:

- A. Purpose and Character of the Use. Noncommercial and non-profit educational uses are favored over commercial ones. Transformative uses (i.e., using a portion of a work to create something new) are also favored.
- B. Nature of the Work. Factual works are favored over use of highly creative works.
- C. Amount and Substantiality of the Portion Used. Use is more likely to be considered fair for small quantities, where the portion used is not significant to the entire work, and where the amount is no more than needed for the intended educational purpose.
- D. Effect of the Use on the Potential Market or Value. Factors favoring fair use include use of lawfully acquired or purchased copies of the original work, small numbers of copies being made. Factors arguing against fair use include repeated or long-term use, and making materials widely available such as on the Internet.

North Idaho College has set forth the following guidelines for typical academic uses.

**Compliance with these guidelines does not guarantee that a use falls within the fair use exemption.** The four fair use factors set forth in the US Copyright Act as stated in NIC

Policy 2.03.04 should be thoughtfully considered in each particular case. Materials in excess of fair use may still be used with appropriate permission and/or fees to the copyright holder.

## **II. Copying Materials for Instructional Use**

Under certain conditions specified in copyright law, a photocopy or other reproduction is not to be “used for any purpose other than private study, scholarship, or research.”

Instructors who intend to distribute photocopied materials to students in class should comply with the following:

- Materials should include a copyright notice on the first page;
- The students should not be assessed any fees beyond actual photocopying costs;
- The amount of the photocopied material should be reasonable in relation to the total amount of material assigned for one term;
- The effect of copying the material should not be detrimental to the market for the work;
- The amount of the photocopied material should be proportionally limited in relation to the complete work, such as:
  - One chapter from a book;
  - One article from a periodical or newspaper;
  - One short story, essay or poem, whether or not from a collective work.

## **III. Displaying Media on Campus**

Users must secure public performance rights prior to showing a copyrighted work on campus, unless the work was purchased with public performance rights attached. However, an exemption to this requirement exists for classroom showings. Classroom use or showing of a copyrighted work by instructors or students is permissible when the use is part of the curriculum for a specific course; the audience is confined to the members of the course or other teaching activity; and the copy of the media is lawfully made and acquired. This includes display or performance of films/videos (including DVD, VHS, Blu-ray, streaming), songs, artworks, websites, plays, photographs, and poems or other literature.

Off-air broadcasts may be recorded and shown once to a single class within the first ten days after the date of the broadcast. This does not allow for multiple showings or general showings within North Idaho College.

## **IV. Using Multimedia Materials**

A student or faculty multimedia project may incorporate existing multimedia (music, lyrics, music videos, motion media, photographs, and illustrations). The amount of the copyrighted work that may be used is restricted by specific portion limitations. In particular, the portion limitations relate to the amount of copyrighted work that can reasonably be used in educational multimedia projects regardless of the original medium from which the copyrighted works are taken. The borrowed material may not constitute more than 10% of the original work, nor may it comprise the majority of the finished product. Attribution and acknowledgement are required.

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

The Digital Millennium Copyright Act (DMCA) provides an opportunity for internet service providers (ISPs) to shield themselves from liability for the actions of their users that infringe on the copyrights of others. All institutions of higher education that provide internet access fall within the scope of the definition of an ISP, with relevant users being their students, faculty and staff. In all cases, the fair-use exemption that allows use of copyrighted materials in narrowly defined circumstances applies to materials in digital form just as it applies to traditional media.

The DMCA does not require that North Idaho College “police” the internet activities of its faculty, staff or students. Rather, it requires that the College respond in specified ways to avoid institutional liability when evidence of infringing activity is brought to its attention or when it receives information that makes it apparent that infringing activity is occurring.

## **VI. Requesting Permission**

If a user seeks to use copyrighted works outside of the fair use guidelines, the user should contact the Library Director or designee for assistance in obtaining permission from the copyright holder. Users should make these requests in writing and include the following information:

- Title of the work
- Name of author, artist, etc.
- Description of the material to be used
- Nature of the intended use
- The expected audience or number of copies to be made, number of performances to be made, description of how the work will be displayed, etc., as applicable.

## **VII. Enforcement, Penalties for Infringement and Legal Review**

Substantial penalties can be imposed for infringement of a copyright. Payment of actual damages for financial loss suffered by the copyright owner may be required. Statutory damages, for which no actual damages need be proved, may be assessed.

North Idaho College reserves the right to enforce violations of this policy. Failure to comply may result in suspension or termination of network services, or appropriate disciplinary action up to termination in the case of employees or expulsion in the case of students.

Members of the North Idaho College community may request legal review of a copyright situation or issue at the discretion of the President or the President's designee. Such request must be in writing and should identify the issue to be addressed, as well as the requestor's efforts to investigate and resolve the issue to that point. If the President or designee decides that the issue is of sufficient importance, the President or designee may request review by legal counsel of the situation or issue and share legal counsel's review and conclusions with the requestor and the College community.