THE COPYRIGHT POLICY OF
THE NEW ENGLAND COLLEGE OF OPTOMETRY
Approved by the Board of Trustees April 2011

I. Introduction

The New England College of Optometry ("the College") is committed to providing an environment that supports the research and teaching activities of its faculty, students, and staff. As a matter of principle and practice, the College encourages all of its members to publish without restriction their papers, books, and other forms of communication in order to share openly their findings and knowledge with both the optometric profession as well as the general public.

This Copyright Policy ("the Policy") is intended to provide guidance for members of the College community, including faculty, visiting faculty, staff, administrators, and students in matters of copyright compliance when using a variety of creative works including, but not limited to, printed materials, digital media, sound recordings, and computer and educational software. The College expects that all members of the community adhere to the provisions of the United States Copyright Law, Title 17, United States Code, Sec. 101. This law can be viewed in its entirety at http://www.copyright.gov/title17/.

The Policy provides the College community with a summary of U.S. copyright law related to the use of copyrighted works in the classroom, in the course management system, and in the library, and provides guidelines and procedures for obtaining permission to use copyrighted works. While the policy provides practical advice and procedures on copyright matters, legal advice should be sought if a member of the community feels clarification is needed. ***Members of the College community who willfully disregard the policy do so at their own risk and assume all liability.***

For purposes of this policy, "the College" also refers to the faculty and staff of the New England Eye, Inc. ("NEE"), the College's clinical teaching affiliate.

II. Definitions You Should Know

A. Copyright

What is copyright?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (Title 17, U.S. Code). If you are not a copyright holder for a particular work as determined by the law, you must ordinarily

obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

What is Protected by Copyright?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship," including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights or “uses” granted to the "authors" of these works are the rights to reproduce, distribute, publicly perform, and to publicly display their works.

These rights provide copyright holders with control over the use of their creations, and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also gives its holder the exclusive rights to "make a derivative work," such as a translation or a movie from a book; to include a work in a collective work, such as publishing an article in a book or journal; and to attribution and integrity for certain works of visual art. Copyright law does not protect ideas, data, or facts, but does protect the “expression” or “original” presentation of such ideas, data, and facts. Thus, although medical images, photographic or sketched, may be considered factual in nature, there is recognized copyrighted expression in the selection, posing, framing and lighting of the subject as well as in the style of sketching.

DMCA – Digital Millennium Copyright Act of 1998

The Digital Millennium Copyright Act (DMCA) was enacted in 1998 to address, among other things, the ease of illicit copying of copyrighted materials in digital format. Under the DMCA, the College is considered a “service provider,”, i.e. provides network services; therefore, DMCA provides a “safe harbor” against institutional liability if certain procedures are complied with, among other things, the designation of an agent to whom notifications of infringement are to be sent, the automatic “take down” of offending material upon receipt of a notification effective under 17 U.S.C. 512(c)(3) and an automatic “replacement” of the material upon counter-notification under 17 U.S.C. 512(g)(2)-(3) (unless a suit is filed). The College will abide by these procedures with respect to all network use, including Moodle, and refer all network users to “The New England College of Optometry Peer-to-Peer (P2P) Policy.”

In accordance with the DMCA, the College has a designated agent for receipt of take down notices related to copyright infringement in the College’s networks and computers.

For more information about the DMCA or the College's policy regarding copyright and our computer networks, see http://www.copyright.gov/legislation/hr2281.pdf and the Peer-to-Peer Policy.

B. Fair Use

Under the fair use provisions of the Copyright Act, a limited reproduction of someone else's copyright-protected work is likely to be considered fair and may be used without permission if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship, and research. However, fair use is an amorphous concept that must be applied to each "use" (reproduction, distribution, public display, etc.), and the law does not state exactly what uses of a copyrighted work will be considered "fair." The Copyright Act requires consideration of the following four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use)
2. The nature of the copyright-protected work
3. The amount and substantiality of the portion used
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

These factors are set forth in the Copyright Act at Chapter 1, Section 107: http://www.copyright.gov/title17/92chap1.pdf

All four factors must be considered. For example, while use of a textual recitation of data may be considered fair if the entire article is not reproduced, the use of an image in the article may not be considered fair if it affects the market for that image. Individuals may often themselves need to be interpreters of the law in everyday circumstances and ask themselves how much reproduction may be considered fair use, according to the four factors. To assist you in this analysis, please refer to the NECO Library copyright page at https://library.neco.edu/writing or email library@neco.edu.

C. Public Domain

There are no copyright restrictions on works considered to be in the public domain. Each of the following are considered to be in the public domain:

- works beyond their copyright terms; that is, 70 years from the death of the last individual author or the shorter of 95 years from publication or 120 years from creation of a work-for-hire or anonymous work

- works published before January 1, 1978, that did not include a copyright notice (and thereby were dedicated to the public under prior law)

- most U.S. government documents (but not necessarily state or local government documents)

- publications expressly and specifically dedicated by the rights holder to the public domain. These include works dedicated to "Creative Commons" and "open source" software, which may still require attribution and notice. Certain types of open source software, namely "GPL" (general public license) software, including Linux, Mozilla, and Apache, have additional conditions that source code be distributed at cost, limiting use in a proprietary software business model.

For more information on copyright duration, visit:
https://www.copyright.gov/help/faq/faq-duration.html

D. Copyright and Foreign Works

The U.S. is a member of the leading international copyright treaty, the Berne Convention. As such, when the College uses a copyright-protected work from another country, the protections provided to works by U.S. copyright law automatically apply to the use of that work as well (assuming the use takes place in the U.S.). The Copyright Clearance Center has many reciprocal licenses to allow use of materials from other countries.

III. Copyright in the Classroom

A. Classroom Handouts

Based on the College's fair use analysis, classroom handouts fall into one of two categories: one that requires permission, and one that does not. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may without permission perform or display a copyrighted work in the classroom if the copy is a legitimate one and so long as additional copies are limited to the course enrollment. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance, you need to either feel comfortable claiming fair use using the four factors above OR obtain permission to use the copyrighted work.

B. Copyright and Images

The same copyright and use laws that apply to print media also apply to images. However, 17 U.S.C. § 110(1) provides that in a face-to-face lecture, a lawful copy of a copyrighted work (text appropriate to the duration of the lecture or images) may be

displayed without permission. (This does not apply to handouts or further copies.) For more information, please see the FAQ posted in the College's Copyright Resource Center.

C. Copyright and Course Notes Packs

As a result of several copyright cases in the early 1990s, the practice of creating course notes packs has changed appreciably. All articles, chapters, and other individual works in any print or electronic course notes pack require copyright permission. Copyright permission for course notes packs is usually granted by the academic period. To reuse a course notes pack in subsequent academic periods (e.g.: semester), you should obtain permission each time. Many copyright holders provide time-sensitive permission because their own rights may be time-sensitive and could be transferred to different copyright holders at any time.

When ordering course notes packs, it is important to clarify who will obtain permission for the course notes pack – the faculty member, or a member of the administrative staff. For more information on the course notes packs creation process, please see the FAQ posted in the College's Copyright Resource Center. ***Deferring responsibility for copyright permission will not provide you protection against a claim of copyright infringement.***

D. Copyright and the Course Management System

To comply with copyright law when using the College's course management system (CMS), the following steps should be adhered to:

- Request advanced permission through the Copyright Clearance Center (CCC) to post articles and book chapters, particularly for those materials shared with large numbers of students and definitely for those materials that are not used spontaneously and for one class session only.
- If you obtain permission to use a copyrighted work for the duration of the course, post the materials in the CMS in a reasonably non-reproducible format for the duration of the course.
- Do not keep materials posted for an extended period of time. Only allow students access to posted materials for the duration of the course.
- If a class session is recorded using lecture capture software and it includes the display or performance of copyrighted works without permission, the recording should be streamed or posted in a reasonably non-reproducible format.
- Provide a copyright statement that tells students that it is their responsibility to handle the materials properly in relation to copyright.
- Regularly educate students on copyright and how to be good consumers of materials.
- Periodically remind students to keep their course materials because access to them at a later date will not be possible due to copyright compliance.

- Request advanced permission from the CCC to post articles and book chapters, particularly for those materials shared with large numbers of students and for those materials used repeatedly.

In both the classroom and in the CMS, pointing students to where they can get an article themselves, rather than loading the actual scanned article/chapter, is one way to share resources repeatedly or with large numbers of students without obtaining permission. For those items included in the library's online collection, a link to an article can be shared if the College's library subscribes to that particular journal. For more information on copyright and the CMS, please see the FAQ posted in the College's Copyright Resource Center.

The copyright constraints on CMS (currently Moodle for the College) postings are similar to those for the classroom, particularly course handouts. If the use is spontaneous and will not be repeated, it may be generally considered fair use and copyright permission is not required for a session; however, the content may not be accessible for longer than the class session (this requires a streamed, ordinarily non-reproducible format). Fair use analysis depends on the use in CMS, not just the original lecture. Thus, if the session is four months, it may be that some work that is used spontaneously at a lecture early in the session could have had permission sought after that lecture, but before it was put online.

E. Copyright, Distance Learning, and the TEACH Act

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act, modifying 17 U.S.C. § 110(2) became law and expanded the latitude academic institutions, including the College, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of course management systems, such as Moodle, Blackboard, or Web CT.

The copyright requirements for TEACH and CMS postings are similar to those of classroom (face-to-face) teaching under 17 U.S.C. § 110(1), but adapt the traditional rules for performances and displays to the digital transmission of materials. If the performance or display is in an amount comparable to that in a live classroom session, copyright permission is not required; however, transmission must be limited to students officially enrolled in the course and reasonably prevent retention of the work in accessible form by the recipient for longer than the class session; for example, by streaming.

The issue of posting other class materials, such as handouts, is subject to fair use considerations. If the use is planned, repeated, or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission.

F. Copyright and Student Note Taking

Class lectures are the intellectual property of the College and/or instructor. See the Student Handbook for any updates to student note taker process or policy.

Because class lectures are the intellectual property of the instructor, students are required to obtain written permission from each instructor in question before reproducing the notes from any given class for distribution. The instructor may provide blanket permission on Moodle.

IV. Copyright and Library Services

A. Library Reserves

If the College library owns a copy of a publication, the library may place that copy on reserve without obtaining copyright permission. Faculty members must make a new request each semester for materials to be placed on reserve for their courses. As long as there is a new request each semester, fair use may be claimed. If the library doesn't own an item for reserve, an instructor may place a copy purchased with departmental or other institutional funds. Reserve materials can often be purchased by the library for addition to its collection.

B. Document Delivery Services

It is important to maintain a distinction between Interlibrary Loan (ILL) and Document Delivery Services (DD). Photocopying for DD requires copyright permission since it is a way to obtain journal articles once CONTU guidelines have been exceeded. In essence, the library needs to acquire permission, on the patron's behalf, to receive a copy of the requested article for the patron's use.

C. Interlibrary Loan

The College library may participate in interlibrary loans without obtaining permission provided that the "aggregate quantities" of articles or items received by the patron do not substitute for a periodical subscription or purchase of a work. The College follows the CONTU guidelines for defining "aggregate quantities." The CONTU guidelines state that requesting and receiving more than five articles from a single periodical within a calendar year or a total of six or more copies of articles published within five years prior to the date of request would be too many.

D. Photocopying Copyright-Protected Materials

Photocopying by Library Staff on Behalf of Patrons

It is permissible to photocopy copyright-protected works in the College library without obtaining permission from the copyright owner, under the following circumstances:

- **Library user requests for articles and short excerpts.** At the request of a library user or another library on behalf of a library user, the College library may make one reproduction of an article from a periodical or a small part of any other work. The reproduction becomes the property of the library user and the library must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship, and research. As required by Section 108 of the Copyright Act, the library must display the register's notice at each place library users make their reproduction requests to the library.
- **Archival reproductions of unpublished works.** Up to three reproductions of any unpublished work may be made for preservation or security or for deposit for research use in another library or archive. This may be a photocopy or digital reproduction. If it is a digital reproduction, the reproduction may not be made available to the public outside the library or archive premises. Prior to receiving any of the three reproductions permitted under this provision from another library or archive, the College library or archive must make a reasonable effort to purchase a new replacement at a fair price. The reproducing library or archive must also own the work in its collection.
- **Replacement of lost, damaged or obsolete copies.** The library may make up to three reproductions, including digital reproductions, of a published work that is lost, stolen, damaged, deteriorating, or stored in an obsolete format. Any digital reproductions must be kept within the confines of the library (that is, available on a single computer but not placed on the public network).
- **Library user requests for entire works.** One reproduction of an entire book or periodical may be made by your library at a library user's request or by another library on behalf of a library user upon certain conditions being met. These conditions include the library determining after reasonable investigation that an authorized reproduction cannot be obtained at a reasonable price. Once made, the reproduction must become the property of the library user. The library must have no reason to believe that the reproduction will be used by the user for purposes other than private study, scholarship, and research and the library must display the register's notice at the place library users make their reproduction requests to the library.

Photocopying by students, faculty, and staff is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, may be made without permission. Photocopying all the assignments from a book recommended for purchase by the instructor, making multiple copies of articles or book chapters for distribution to classmates, or copying material from consumable workbooks, all require permission.

V. Copyright and File-sharing (P2P)

Please see the separate College Peer-to-Peer Policy for information about copyright related to network usage and file sharing.

VI. Obtaining Permission

Permission to use copyright-protected materials which are not clearly marked for educational re-use or for which fair use cannot be claimed should be obtained by professor of note for a course ***prior*** to using those materials. If usage is not covered by the Copyright Clearance Center's Academic Site License, permission can be sought by checking for copyright permission guidelines on the copyright holder's website or emailing the copyright holder. It is best to obtain permission in writing (including e- mail) and to ensure that the College's Copyright Officer has a copy of each permission form or letter.

VII. Copyright Officer

To ensure consistent management of copyright issues, the College President will appoint a copyright officer whose responsibility it will be to reasonably:

- implement the College's copyright policy, including providing for the posting or retention of any records necessary for compliance by the College

- educate the College community about copyright laws.

The President will also appoint an agent under 17 U.S.C § 512(c), who may also be the copyright officer, to receive and respond to notices of infringement relating to information residing on the systems or networks of the College.

REVIEW AND INTERPRETATION OF POLICY

This policy will be reviewed no later than January 1, 2021, and updated if necessary.

For interpretation of this policy, contact the NECO Reference & Outreach Librarian by phone at (617)-587-5623 or via email at library@neco.edu.

The New England College of Optometry Copyright Policy has been most recently updated on January 23, 2020.