



DEPARTMENT OF THE NAVY  
OFFICE OF THE PROVOST  
UNITED STATES NAVAL ACADEMY  
589 MCNAIR ROAD  
ANNAPOLIS MARYLAND 21402-1300

PROVOSTINST 5870.1B  
6 Feb 2024

PROVOST INSTRUCTION 5870.1B

From: Provost, U.S. Naval Academy

Subj: USE OF COPYRIGHTED MATERIAL

Ref: (a) Copyright Law, Title 17, United States Code  
(b) SECNAVINST 5870.4A, COPYRIGHT

Encl: (1) Copyright Guidelines  
(2) Sample Request for Permission to Copy Beyond "Fair Use"

1. Purpose. To provide a guide for utilizing copyrighted materials at the Naval Academy, which will: a) facilitate Naval Academy-wide compliance with Reference (a); and b) encourage faculty, staff, and midshipmen to take advantage of the "fair use" provisions of the copyright law and associated guidelines.

a. The Naval Academy encourages the use of copyrighted material as an important, often essential, component of teaching and research. It is recognized that in many academic applications, copyrighted content is the raw material on which a specific intellectual endeavor depends. The intended use of the material should serve as the primary guide for its legitimate inclusion. In the educational setting, faculty and students should be encouraged to use, selectively and creatively, no more and no less of the material than is legitimate for their discipline or sub-discipline. Therefore, the emphasis in this document is on providing a "can do" environment rather than a "can't do" environment for faculty, students, and staff who wish to use copyrighted material for legitimate educational purposes.

b. To this end, this instruction features a discussion of two aspects related to the **fair use** of copyrighted material: (1) from the copyright law, four **factors** to use in determining whether or not a proposed use is "fair" as provided by the law, and (2) generally accepted **guidelines** drawn up by major groups representing both the producers and consumers of copyrighted material. The four factors are described in detail in Enclosure (1).

2. Cancellation. USNAINST 5870.1A. This instruction is a complete revision; therefore, it should be read in its entirety.

3. General Information about Copyright

a. Subject matter and duration of copyright. United States copyright law is set forth in Reference (a). Under this law, original works of authorship, published or unpublished, are automatically copyrighted when fixed in any tangible medium of expression from which they

can be perceived, reproduced, or otherwise communicated directly or with the aid of a mechanical device. Once conferred, copyright protection in works created in 1978 or later normally endures for the life of the author plus 70 years. If the author cannot be identified, the duration of copyright is 95 years from first publication or 120 years from the year of its creation, whichever expires first.

b. Original works of authorship that are typically subject to copyright law include literary works (expressed in words or numbers), musical works, dramatic works, audiovisual works (including motion pictures), sound recordings, and pictorial and graphic works—including digital representations of such forms communicated over the Internet or by other means.

c. Rights of copyright owner. Subject to the exceptions noted in section 3(d) below, the copyright owner has the exclusive rights to control:

- (1) Reproduction of the copyrighted work in copies.
- (2) Preparation of derivative works based on the copyrighted work.
- (3) Public distribution of copies of the copyrighted work by sale, gift, rental, or loan.
- (4) Public performance or display of the copyrighted work.

d. Expression vs. idea. Copyright law protects only the literary, musical, graphic, or artistic form in which the author expressed his or her material. It does not restrict the use of ideas, processes, procedures, concepts, or principles expressed in the copyrighted work.

e. Copyright infringement. Any infringing user is liable for monetary damages; the U.S. Government has no general exemption from copyright infringement liability. **But there are two broad categories of use that do not constitute infringement** of copyright and do not require the user to seek permission from the copyright owner:

(1) the proposed use is outside the rights of use (specified above in 4(b)) granted to the copyright owner by the law; or, more commonly,

(2) the proposed use is covered by either a specific exception in the copyright law or by a more general exception under the copyright law, referred to in the statute as "fair use." (These exceptions are discussed in section (5), below.) In determining what constitutes fair use, subsequent fair-use guidelines, the most recent of which are discussed in this instruction, should be consulted.

#### 4. Making Copies Legitimately: Exceptions to Owners' Rights

a. Limitations on rights of copyright owner: summary. Ten sections of the Copyright Act (Reference (a)) provide various limitations on the owner's exclusive right to make copies. Three of these sections, 107, 108, and 110 are especially pertinent here. Section 108 deals with libraries and archives. Section 110 deals with the performance or display of a work during face-to-face classroom teaching. Section 107 deals with the **primary** exception to the copyright owner's exclusive right: the **doctrine of fair use**.

b. Libraries and archives (Section 108). Employees of a library or archives, acting within the scope of their authority, are permitted to produce one copy, and in certain cases up to three copies, of a copyrighted work.

c. Classroom teaching (Section 110). The display or performance must be during the course of classroom teaching, with the instructor present either in the classroom, or at least in the same building as the students. The copy which is displayed or performed must have been lawfully made.

d. Fair Use (Section 107).

(1) The **primary** exception to the copyright owner's exclusive right to control reproduction and distribution rights is the **doctrine of fair use**. Fair use, section 107 of Reference (a), permits copying without the owner's permission for purposes such as criticism, comment, scholarship, research, or teaching and authorizes the making of multiple copies for classroom use. Enclosure (1) of this Instruction reproduces this "fair use" section of the copyright law in its entirety. Every instance of use must be analyzed on a case-by-case basis.

(2) **According to copyright law itself**, the determination as to whether a particular use is a "fair" use of a copyrighted work requires evaluation of the following **four factors**, each of equal importance:

(a) The **purpose and character** of use, most especially whether the use is for educational purposes or for commercial purposes;

(b) The **nature** of the copyrighted work. Generally, copying nonfiction is more likely to be deemed fair use than is copying fiction;

(c) The **amount and substantiality** of material used in relation to the copyrighted work as a whole. Both the quantity (the amount copied) and the quality (the importance of the portion copied) of use must be weighed; and

(d) The **effect** of the use **on the potential market for or value** of the work.

(3) Before turning to these four factors, would-be users should first consider the applicability of enclosure (1) for various types of materials; in many cases the guidelines will likely permit the desired copying.

## 5. Using the Guidelines to Evaluate Fair Use

a. Because very often there is no simple test to determine what constitutes fair use, several groups sought to clarify "fair use" by adopting guidelines utilizing copyrighted material per enclosure (1). The abbreviated guidelines offered here are provided as a quick primer for determining whether or not permission of a copyright owner should be sought prior to reproduction for research or classroom use.

b. It is important to note that the limitations and conditions set forth in these guidelines **do not apply to works in the public domain** — such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions — or to works for

which the individual or institution has obtained prior permission for the particular use. Also, **license agreements** may govern the uses of some works, and users should refer to the applicable license terms for guidance.

c. It also must be noted that **these guidelines express only the minimum standards** of educational fair use. Faculty or others wishing to copy more than the guidelines allow should rely on the **four-factor test for fair use** set forth above and in Enclosure (1). If it is determined that neither the guidelines nor the four-factor test allow the specific copying desired, permission must be obtained from the copyright owner, usually either the publisher or the author, per reference (b).

d. In short, faculty or others wishing to make copies of copyrighted materials **must secure permission** from the copyright owner, if **neither** the guidelines **nor** an interpretation of the four factors will permit legitimate copying. Enclosure (2) is a sample letter requesting permission.

#### 6. Requesting Permission to Copy Beyond Fair Use

a. When a Naval Academy faculty or staff member, or a midshipman, concludes that permission of a copyright owner may be required prior to use of a copyrighted work, they will request the permission directly from the copyright owner or his/her agent. Unless the requesting individual is aware that free permission will not be granted, the **initial request should ask for free permission**, as per references (b) and (c). The request should include:

(1) Title, author and/or editor, edition of materials to be duplicated, and exact copyright notice(s) appearing on the work.

(2) Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material and the copyright page. Blanket permission to copy excerpts "as later determined" will not be requested.

(3) Number of copies to be made.

(4) Intended use for the duplicated materials (and duration).

(5) Form of distribution, including form and recipients (classroom, newsletter, etc.).

(6) Whether or not the material is to be sold and contemplated fees or charges in connection with use or distribution of the material.

(7) Type of reprint (photography, offset, typeset).

(8) Dates, media, and intended audience of public performances or displays.

(9) Contemplated modifications of the work, if any.

b. The request will be for rights no greater than actually needed.

c. The request will be submitted in duplicate so the recipient may retain one copy and return the other granting permission.



6 Feb 2024

d. The request will indicate that the copyright owner may designate the copyright notice and credit line to be used.

e. A self-addressed return envelope will be enclosed.

f. The letter should be drafted on official United States Naval Academy letterhead.

g. If the address of the publisher does not appear at the front of the material, it may be readily obtained in a publication entitled THE LITERARY MARKET PLACE, published by the R. R. Bowker Company and available in the Nimitz Library. Enclosure (2) is a sample letter requesting permission to copy beyond fair use.

## 7. Action

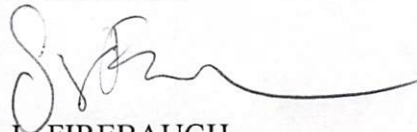
a. Upon receipt of this instruction, all personnel shall be responsible for adherence to the guidance established in Sections 4, 5, 6, and 7 of this instruction.

## 8. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned for the standard subject identification codes (SSIC) 1000 through 13000 series per the records disposition schedules located on the Department of the Navy/Assistant for Administration (DON/AA), Directives and Records Management Division (DRMD) portal page at <https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/Recordsand-Information-Management/Approved%20Record%20Schedules/Forms/AllItems.aspx>. b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact the U.S. Naval Academy Records Manager or the DON/AA DRMD program office

b. For questions concerning the management of records related to this notice or the records disposition schedules, please contact your local records manager or the DON/AA DRMD program office.

9. Review and Effective Date. Per OPNAVINST 5215.17A, the Associate Provost for Academic Affairs will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, DoD, SECNAV, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction.



S. L. FIREBAUGH  
Provost

Releasability and distribution: This notice is not cleared for public release and is available electronically only via USNA Intranet Issuances Website,  
<https://intranet.usna.edu/Academics/Provost/Rules-Regulations/Notices.php>

**Sample Letter to Copyright Owner Requesting Permission to Copy Beyond Fair Use**  
[Use USNA Letterhead]

Date \_\_\_\_\_

Material Permissions Department  
Hypothetical Book Company  
400 Main Street  
City, State Zip Code

Dear Sir or Madam:

I would like permission to copy, without charge, the following for continued use in my classes in future semesters.

<b>Title:</b>	<i>Learning in College</i> , Second Edition
<b>Copyright:</b>	Hypothetical Book Company, 1980, 1982
<b>Author:</b>	John Doe
<b>Material to be Duplicated:</b>	Chapters 5, 6, and 15 (photocopy enclosed)
<b>Number of Copies:</b>	500
<b>Distribution:</b>	The material will be distributed to students in my classes, and they will pay only the cost of the photocopying or nothing.
<b>Type of Reprint:</b>	Photocopy
<b>Use:</b>	The chapters are to be used as supplementary teaching materials.

A copyright compliance statement and full source citation will be attached to the document at all times.

Please indicate your consent by signing the enclosed copy of this letter and returning it to me in the enclosed envelope.

Thank you for your assistance in serving the U.S. Naval Academy community.

Sincerely,

Faculty Member

\*\*\*\*\*

PERMISSION. The above-requested permission is granted royalty-free. A notice of copyright and credit line is desired as follows:

I hereby certify that I have the authority to grant this permission.

Name \_\_\_\_\_ Title \_\_\_\_\_  
(Please Print)

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Copyright Guidelines

**Introduction: Using the Guidelines to Evaluate Fair Use.** Because very often there is no simple test to determine what constitutes fair use, several groups have sought to clarify fair use by adopting "guidelines" for use of copyrighted material. Such guidelines exist for books and periodicals, music, broadcast programming (e.g., television), computer software, educational multimedia, distance learning, and digital images. The guidelines offered here are provided as one aid in determining whether or not the permission of the copyright owner should be sought prior to reproduction for research or classroom use. (The guidelines have been published in numerous venues; this Instruction relies heavily on the version appearing in Linda K. Enghagen, comp., Fair Use Guidelines for Educators [Washington, D. C.: National Education Association, 1997] portions of which appear here verbatim and are used by permission.

It is important to note that the limitations and conditions set forth in these guidelines do not apply to works in the public domain - such as U.S. Government works or works on which copyright has expired for which there are no copyright restrictions or to works for which the individual or institution has obtained permission for the particular use. Also, license agreements may govern the uses of some works, and users should refer to the applicable license terms for guidance.

It also must be noted that these guidelines express only the minimum standards of educational fair use. Faculty or others wishing to copy more than the guidelines allow should rely on the four-factor test for fair use set forth above. If it is determined that neither the four-factor test nor the guidelines allow the specific copying desired, permission must be obtained from the copyright owner, usually either the publisher or the author, as per reference

In short, faculty or others wishing to make copies of copyrighted materials must secure permission from the copyright owner, if neither the guidelines nor an interpretation of the four factors will permit legitimate copying.

### **1. Guidelines for Books and periodicals**

a. Single Copying for Teachers. A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- (1) A chapter from a book.
- (2) An article from a periodical or newspaper.
- (3) A short story, short essay, or short poem, whether or not from a collective work.
- (4) A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

b. Multiple Copies for Classroom Use. Multiple copies (not to exceed in any event more than

one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:

- (1) The copying meets the tests of brevity and spontaneity as defined below and,
- (2) Meets the cumulative effect test, as defined below and,
- (3) Each copy includes a notice of copyright.

c. Brevity

(1) Poetry. Users may copy a complete poem if less than 250 words and if printed on not more than two pages or, from a longer poem an excerpt of not more than 250 words.

(2) Prose. Users may copy a complete article, story, or essay of fewer than 2,500 words. An excerpt of not more than 1,000 words from any prose work or 10 percent of the work, whichever is less, but in any event a minimum of 500 words.

(3) Each of the numerical limits stated in poetry and prose above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.

(4) Illustration: One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue, may be copied.

(5) "Special" works: The prose paragraph above notwithstanding, "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10 per cent of the words found in the text thereof may be reproduced. Special works are certain adaptations in poetry, prose, or in "poetic prose" composed of language combined with illustrations that are intended sometimes for children and, at other times, for a more general audience, usually containing in their entirety less than 2,500 words.

d. Spontaneity

(1) The copying is at the instance and inspiration of the individual teacher, and.

(2) 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.

e. Cumulative Effect

(1) The copying of material is for only one course in the school in which the copies are made.



(2) 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.

(3) There shall not be more than nine instances of such multiple copying for one course during the class term.

(4) The limitations stated above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

f. Additional Prohibitions. Notwithstanding any of the above, the following prohibitions shall apply:

(1) Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

(2) Copying shall not be used as a substitute for the purchase of books, publishers' reprints, or periodicals, be directed by higher authority, or be repeated with respect to the same item by the same teacher from term to term.

## **2. Guidelines for Music**

### **a. Permissible Uses:**

(1) Emergency copying to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.

(2) For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement or aria, but in no case more than 10% of the whole work. Nor shall the number of copies exceed one copy per pupil.

(3) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is either confirmed by the copyright proprietor to be out of print, or unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

(4) Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted, or the lyrics, if any, altered or lyrics added if none exist.

(5) A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

(6) A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

b. The following are strictly prohibited.

(1) Copying to create or replace or substitute for anthologies, compilations, or collective works.

(2) Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, and like material.

(3) Copying for the purpose of performance, except as in above.

(4) Copying for the purpose of substituting for the purchase of music, except as in above.

(5) Copying without inclusion of the copyright notice that appears on the printed copy.

**3. Guidelines for Television Programs**

a. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained for a period not to exceed the first forty-five (45) consecutive calendar days after the date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations without charge for reception by the general public.

b. Off-air recordings may be used once by individual faculty in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days-not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions-within the forty-five (45) calendar day retention period.

c. Off-air recordings may be made only at the request of, and used by, individual faculty, and may be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same faculty member, regardless of the number of times the program may be broadcast.

d. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of faculty under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

e. After the first ten (10) consecutive school days, off-air recording may be used up to the end

of the forty five (45) calendar day retention period only for evaluation by faculty, (e.g., to determine whether or not to include the broadcast program in a course) and may not be used for non-evaluative purposes without authorization.

f. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

g. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded

#### **4. Guidelines for Multimedia**

a. Preparation of Educational Multimedia Projects Using Portions of Copyrighted Works. These uses are subject to the Portion Limitations below. They should include proper attribution and citation as defined below.

(1) By Midshipmen. Midshipmen may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for a specific course

(2) By Faculty for Curriculum-Based Instruction. Faculty may incorporate portions of acquired copyrighted works when producing educational multimedia projects for their tools in support of curriculum-based activities at the Naval Academy.

b. Permitted Uses of Educational Multimedia Projects Created Under These Guidelines. Uses of educational multimedia projects under these guidelines are subject to the. Time, created Portion, Copying and Distribution Limitations listed below in Section d(3).

(1) Midshipman Use. Midshipmen may perform and display their own educational multimedia projects created under Section d(1) of these guidelines for educational uses in the course for which they were created and may use them in their own portfolios as examples of their academic work.

(2) Faculty Use For Curriculum-Based Instruction. Faculty may perform and display their own educational multimedia projects created under Section d(1) for curriculum-based instruction to midshipmen in the following situations:

(a) study for face-to-face instruction

(b) assigned to midshipmen for directed self

(c) for remote instruction to midshipmen enrolled in curriculum-based courses and located at remote sites, provided over the Naval Academy's secure electronic network in real-time, or for after class review or directed self study, provided there are technological limitations on access to the network and educational multimedia project (such as a password or

PIN) and provided further that the technology prevents the making of copies of copyrighted material.

(d) If the Naval Academy's network or technology used to access the educational multimedia project created under these guidelines cannot prevent duplication of copyrighted material, midshipmen or faculty may use the multimedia educational projects over an otherwise secure network for a period of only 15 days after its initial real-time remote use in the course of instruction or 15 days after its assignment for directed self-study. After that period, one of the two use copies of the educational multimedia project may be placed on reserve in a learning resource center, library or similar facility for on-site use by midshipmen enrolled in the course. Midshipmen shall be advised that they are not permitted to make their own copies of the educational multimedia project.

(3) Faculty Use for Peer Conferences. Faculty may perform or display their own educational multimedia projects created under these guidelines in presentations to their peers, for example at workshops and conferences.

(4) Faculty Use for Professional Portfolio. Faculty may retain educational multimedia projects created under these guidelines in their personal portfolios for later personal uses such as tenure review.

c. Limitations - Time, Portion, Copying and Distribution

(1) Time Limitations. Faculty may use their educational multimedia projects created for educational purposes under these guidelines for teaching courses, for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production. Midshipmen may use their educational multimedia projects as noted above.

(2) Portion Limitations. Portion limitations mean the amount of a copyrighted work that can reasonably be used in education multimedia projects under these guidelines regardless of the original medium from which the copyrighted works are taken. **In the aggregate** means the total amount of copyrighted material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission under these guidelines. These limitations apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All midshipmen should be instructed about the reasons for copyright protection and need to follow the guidelines.

(a) Motion Media. Up to 10% or 3 minutes, whichever is less, in the aggregate of a copyrighted motion media work may be reproduced or otherwise incorporated as part of an educational multimedia project created under these guidelines.

(b) Text Material. Up to 10% or 1000 words, whichever is less, in the aggregate of a copyrighted work consisting of text material may be reproduced or otherwise incorporated as part of an educational multimedia project created under these guidelines. An entire poem of less than 250 words may be used, but no more than three poems by one poet, or five poems by

different poets from any anthology may be used. For poems of greater length, 250 words may be used but no more than three excerpts by a poet, or five excerpts by different poets from a single anthology may be used.

(c) Music, Lyrics, and Music Video. Up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work (or in the aggregate of extracts from an individual work), whether the musical work is embodied in copies, or audio or audiovisual works, may be reproduced or otherwise incorporated as a part of a multimedia project. Any alterations to a musical work shall not change the basic melody or the fundamental character of the work.

(d) Illustrations and Photographs. The reproduction or incorporation of photographs and illustrations is more difficult to define with regard to fair use because fair use usually precludes the use of an entire work. Under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated as part of an educational multimedia project. When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less, may be reproduced or otherwise incorporated as part of an educational multimedia project.

(e) Numerical Data Sets. (Up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table may be reproduced or otherwise incorporated as part of an educational multimedia project of these guidelines. A field entry is defined as a specific item of information, such as a name or Social Security Number, in a record of a database file. A cell entry is defined as the intersection where a row and a column meet on a spreadsheet.

(3) Copying and Distribution Limitations. Only a limited number of copies, including the original, may be made of the faculty member's educational multimedia project. For all of the uses permitted, there may be no more than two use copies, only one of which may be placed on reserve as described. An additional copy may be made for preservation purposes but may only be used or copied to replace a used copy that has been lost, stolen, or damaged. In the case of a jointly created educational multimedia project, each principal creator may retain one copy but only for the purposes described for faculty and for midshipmen.

#### (4) Examples of When Permission is Required

(a) Using Multimedia Projects for Non-Educational or Commercial Purposes. Faculty and midshipmen must seek individual permissions (licenses) before using copyrighted works in educational multimedia projects for commercial reproduction and distribution.

(b) Duplication of Multimedia Projects Beyond Limitations Listed in These Guidelines. Even for educational uses, faculty and midshipmen must seek individual permissions for all copyrighted works incorporated in their personally created educational multimedia projects



before replicating or distributing beyond the limitations.

(c) Distribution of Multimedia Projects Beyond Limitations Listed in These Guidelines. Faculty and midshipmen may not use their personally created educational multimedia projects over electronic networks, except for uses as described, without obtaining permissions for all copyrighted works incorporated in the program.

## (5) IMPORTANT REMINDERS

(a) Caution in Downloading Material From the Internet. Faculty and midshipmen must exercise caution in using digital material downloaded from the Internet in producing their own educational multimedia projects, because there is a mix of works protected by copyright and works in the public domain on networks. Access to works on the Internet does not automatically mean that these can be reproduced and reused without permission or royalty payment and, furthermore, some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

(b) Attribution and Acknowledgment. Faculty and midshipmen must credit the sources and display the copyright notice and copyright ownership information if this is shown in the original source, for all works incorporated as part of educational multimedia projects, including those prepared under fair use. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright ownership information includes the copyright notice (©, year of first publication and name of the copyright holder) The credit and copyright notice information may be combined and shown in a separate section of the educational multimedia project (e.g. credit section) except for images incorporated into the project for the uses. In such cases, the copyright notice and the name of the creator of the image must be incorporated into the image when, and to the extent, such information is reasonably available; credit and copyright notice information is considered "incorporated" if it is attached to the image file and appears on the screen when the image is viewed. In those cases when displaying source credits and copyright ownership information on the screen with the image would be mutually exclusive with an instructional objective (e.g. during examinations in which the source credits and/or copyright information would be relevant to the examination questions), those images may be displayed without such information being simultaneously displayed on the screen. In such cases, this information should be linked to the image in a manner compatible with such instructional objectives.

(c) Notice of Use Restriction. Faculty and midshipmen must include on the opening screen of their multimedia project and any accompanying print material a notice that certain materials are included under the fair use exemption of the U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use

(d) Future Uses Beyond Fair Use. Faculty and midshipmen should note that if there is a possibility that their own educational multimedia project incorporating copyrighted works

under fair use could later result in broader dissemination, whether or not as commercial product, it is strongly recommended that they take steps to obtain permissions during the development process for all copyrighted portions rather than waiting until after completion of the project.

(e) Integrity of Copyrighted Works: Alterations. Faculty and midshipmen may make alterations in the portions of the copyrighted works they incorporate as part of an educational multimedia project only if the alterations support specific instructional objectives. Faculty and midshipmen are advised to note that alterations have been made.

(f) Reproduction or Decompilation of Copyrighted Computer Programs. Faculty and midshipmen should be aware that reproduction or decompilation of copyrighted computer programs and portions thereof, for example the transfer of underlying code or control mechanisms, even for educational uses, are outside the scope of this section of the guidelines.

(g) Licenses and Contracts. Faculty and midshipmen should determine whether specific copyrighted works, other data or information are subject to a license or contract. Fair use and these guidelines shall not preempt or supersede licenses and contractual obligations.

**5. Guidelines for Digital Images.** (Note: below explains what the fair use guidelines are for the Naval Academy as a whole. Subsequent subsections above emphasize use by faculty, staff, and midshipmen,)

**a. Image Digitization and Use by USNA**

(1) Digitizing by the Naval Academy of Newly Acquired Analog Visual Images. USNA may digitize newly and lawfully acquired analog visual images to support the permitted educational uses under these guidelines unless such images are readily available in usable digital form for purchase or license at a fair price. Images that are readily available in usable digital form for purchase of 0£ license at a fair price should not be digitized for addition to an institutional image collection without permission.

(2) Creating Thumbnail Images. USNA may create thumbnail images of lawfully acquired images for inclusion in a visual catalog for use at the institution. These thumbnail images may be combined with descriptive text in a visual catalog that is searchable by a number of fields such as the source.

(3) Access, Display, and Distribution on an Institution's Secure Network. Subject to the time limitations below, USNA may display and provide access to images digitized under these guidelines through its secure electronic network.

(a) Visual online catalog USNA may display a visual online catalog, which includes the thumbnail images created as part of the digitization process, on the Academy's secure electronic network, and may provide access to such catalog by USNA faculty, scholars, and midshipmen.

(b) Course compilations of digital images. USNA may display a compilation of digital images (see below) on the Academy's secure electronic network for classroom use, after-class

review, or directed study, since there are technological limitations (such as a password or PIN) restricting access only to midshipmen enrolled in the course. Such images may be displayed on the Academy's secure electronic network only during the semester or term in which that academic course is given.

(c) Access, display, and distribution beyond the Academy's secure electronic network. Electronic access to, or display or distribution of images digitized under these guidelines, including the thumbnail images in the USNA's visual online catalog, is not permitted beyond the USNA electronic network, even for educational purposes. However, those portions of the visual online catalog which do not contain images digitized under these guidelines, such as public domain images and text, may be accessed, displayed, or distributed beyond the USNA.

**(4) Time Limitations for Use of Images Digitized by Newly Acquired Analog Visual Images.** USNA may use and retain in digital image collections images that are digitized from newly acquired analog visual images under these guidelines, as long as the retention and use comply with the following conditions:

(a) Images digitized from a known source and not readily available in usable digital form for purchase or license at a fair price may be used for one academic term and may be retained in digital form while permission is being sought. Permission is required for uses beyond the initial use; if permission is not received, any use is outside the scope of these guidelines and subject to the four-factor fair use analysis.

(b) Where the rights holder of an image is unknown, a digitized image may be used for up to 3 years from first use, provided that a reasonable inquiry is conducted seeking permission to digitize, retain, and reuse the digitized image. If after three years permission cannot be obtained, any further use of the image is subject to the four-factor fair use analysis.

b. Use by Faculty, Staff and Midshipmen. Subject to the time limitations images digitized under these guidelines may be used by faculty, staff, and midshipmen as follows:

**(1) Faculty Use of Images Digitized Under These Guidelines.**

(a) Faculty may display digital images for educational purposes, including face-to-face teaching of curriculum-based courses, and research and scholarly activities.

(b) A faculty member may compile digital images for display on the Academy's secure electronic network to midshipmen enrolled in a course given by that faculty member for classroom use, after-class review, or directed study, during the semester or term in which the course is given.

**(2) Use of Images for Peer Conferences.** Faculty, staff, and midshipmen may use or display digital images in connection with lectures or presentations in their fields, including uses at non commercial professional development seminars, workshops, and conferences.

(3) Use of Images for Publications. These guidelines do not cover reproducing and publishing images in publications, including scholarly publications in print or digital form, for which permission is generally required. Before publishing any images under fair use, even for scholarly and critical purposes, faculty should conduct the four-factor fair use analysis.

(4) Midshipman Use of Images Digitized Under These Guidelines

(a) Midshipmen may:

1. Use digital images in an academic course assignment such as a term paper or home project.

2. Publicly display their academic work incorporating digital images in courses for which they are registered and during formal critiques at a nonprofit educational institution.

3. Retain their academic work in their personal portfolios for later uses. Other midshipmen uses are outside the scope of these guidelines and are subject to the four-factor fair use analysis.

4. Retain their academic work in their personal portfolios for later uses. Other midshipmen uses are outside the scope of these guidelines and are subject to the four-factor fair use analysis.

c. Image Digitization by Faculty, Staff, and Midshipmen for Spontaneous Use. Faculty, staff, and midshipmen may digitize lawfully acquired images to support the permitted educational uses under these guidelines if 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. Images digitized for spontaneous use do not automatically become part of the institution's image collection. Permission must be sought for any reuse of such digitized images or their addition to the Academy's image collection.

d. Important Reminders and Fair Use Limitations Under These Guidelines

(1) Creation of Digital Image Collections. When digitizing copyrighted images, as permitted under these guidelines, faculty, staff, or midshipmen should simultaneously conduct the process of seeking permission to retain and use the images. Where the rights holder is unknown, they should pursue and should keep records of their reasonable inquiry.

(2) Reasonable Inquiry. A reasonable inquiry for the purpose of clearing rights to digitize and use digital images includes, but is not limited to, conducting each of the following steps: (1) checking any information within the control of the educational institution including slide catalogs and logs, regarding the source of the image; (2) asking relevant faculty, departmental staff, and librarians, including visual resource collections administrators, for any information regarding the source of the image; (3) consulting standard reference publications and databases for information regarding the source of the image; (4) consulting rights reproduction collectives and/or major professional associations representing image creators in the appropriate medium;

and (5) ascertaining whether specific images are subject to any license or contract that might limit the uses of those images.

(3) Attribution and Acknowledgment. Faculty, staff, and midshipmen should credit the sources and display the copyright notice(s) with any copyright ownership information shown in the original source, for all images digitized, including those digitized under fair use. Crediting the source means adequately identifying the source of the work, giving a full bibliographic description where available (including the creator/author, title, publisher, and place and date of publication) or citing the electronic address if the work is from a network source. Faculty, staff, and midshipmen should retain any copyright notice or other proprietary rights notice placed by the copyright owner or image archive or collection on the digital image, unless they know that the work has entered the public domain or that the copyright ownership has changed. In those cases when source credits and copyright ownership information cannot be displayed on the screen with the image for educational reasons (e.g., during examinations), this information should still be linked to the images.

(4) Portions from Single Sources Such as Published Compilations or Motion Pictures. When digitizing and using individual images from a single source such as a published compilation (including but not limited to books, slide sets, and digital image collections), or individual frames from motion pictures or other audiovisual works, users should be aware that fair use limits the number and substantiality of the images that may be used from a single source. In addition; a separate copyright in a compilation may exist. Further, fair use requires consideration of the effect of the use on the potential market for or value of the copyrighted work. The greater the number and substantiality of images taken from a single source, the greater the risk that the use will not be fair use.

(5) Portions of Individual Images. Although the use of entire works is usually not permitted under fair use, it is generally appropriate to use images in their entirety in order to respect the integrity of the original visual image, as long as the limitations on use under these guidelines are in place. For purposes of electronic display, however, portions of an image may be used to highlight certain details of the work for educational purposes as long as the full image is displayed or linked to the portion.

(6) Integrity of Images: Alterations. In order to maintain the integrity of copyrighted works, faculty, staff, and midshipmen are advised to exercise care when making any alterations in a work under fair use for educational purposes such as criticism, comment, teaching, scholarship, and research. Furthermore, they should note the nature of any changes they make to original visual images when producing their own digital images.

(7) Caution in Downloading Images from Other Electronic Sources. Faculty, staff, and midshipmen are advised to exercise caution in using digital images downloaded from other sources, such as the Internet. Such digital environments contain a mix of works protected by copyright and works in the public domain, and some copyrighted works may have been posted to the Internet without authorization of the copyright holder.

e. Transition Period for Pre-Existing Analog Image Collections



(1) Educational institutions may digitize images from pre-existing analog image collections during a reasonable transition period of 7 years (the approximate useful life of a slide). In addition, faculty, staff, and midshipmen may begin to use those digitized images during the transition period to support the educational uses under these guidelines. When digitizing images during the transition period, institutions should simultaneously begin seeking the permission to digitize, retain, and reuse all such digitized images.

(2) Digitization from pre-existing analog image collections is subject to limitations on portions from single sources such as published compilations or motion pictures.

(3) If, after a reasonable inquiry, faculty are unable to identify sufficient information to seek appropriate permission during the transition period, continued retention and use becomes subject to the four-factor fair use analysis. Similarly, digitization and use of such collections after the expiration of the transition period is also subject to the four-factor fair use analysis.

## **6. Guidelines for Distance Learning**

a. Works Performed for Instruction and Relation to Instruction. Works performed must be integrated into the course, must be part of systematic instruction and must be directly related and of material assistance to the teaching content of the transmission. The performance may not be for entertainment purposes.

### **b. Transmission and Reception**

(1) Transmission (delivery). Transmission must be over a secure system with technological limitations on access to the class or program such as a PIN number, password, smartcard or other means of identification of the eligible student.

(2) Reception. Reception must be in a classroom or other similar place normally devoted to instruction or any other site where the reception can be controlled. In all such locations the institution must utilize technological means to prevent copying of the portion of the class session that contains performance of the copyrighted material.

### **c. Limitations**

(1) One-Time Use. Performance of an entire copyrighted work or a large portion thereof may be transmitted only once for a distance learning course. For subsequent performances, displays or access, permission must be obtained.

### **(2) Reproduction and Access to Copies**

(a) Receiving Institution. The institution receiving the transmission may record or copy classes that include the performance of an entire copyrighted work, or a large portion thereof, and retain the recording or copy for up to 15 consecutive class days (i.e., days in which the institution is open for regular instruction) for viewing by students enrolled in the course.

Access to the recording or copy for such viewing must be in a controlled environment such as a classroom, library or media center, and the institution must prevent copying by students of the portion of the class session that contains the performance of the copyrighted work. If the institution wants to retain the recording or copy of the transmission for a longer period of time, it must obtain permission from the rights holder or delete the portion that contains the performance of the copyrighted work.

(b) Transmitting Institution. The transmitting institution may, under the same terms, reproduce and provide access to copies of the transmission containing the performance of a copyrighted work; in addition, it can exercise reproduction rights.

d. Multimedia: Commercially Produced Multimedia. If the copyrighted multimedia work was obtained pursuant to a license agreement, the terms of the license apply. If, however, there is no license, the performance of the copyrighted elements of the multimedia works may be transmitted in accordance with the provisions of these guidelines.

e. Examples of When Permission is Required

(1) Commercial Uses. Any commercial use including the situation where a nonprofit educational institution is conducting courses for a for-profit corporation for a fee such as supervisory training courses or safety training for the corporation's employees.

(2) Dissemination of Recorded Courses. An institution offering instruction via distance learning under these guidelines wants to further disseminate the recordings of the course or portions that contain performance of a copyrighted work.

(3) Uncontrolled Access to Classes. An institution (agency) wants to offer a course or program that contains the performance of copyrighted works to non-employees.

(4) Use Beyond the 15-Day Limitation. An institution wishes to retain the recorded or copied class session that contains the performance of a copyrighted work not covered (It also could delete the portion of the recorded class session that contains the performance.)

7. Guidelines for Software. Information Technology Services (ITSD) provides Naval Academy faculty, staff, and midshipmen access to a collection of copyrighted, site-licensed, and freeware applications for use in support of the Naval Academy's mission. The aforementioned software terms are described below. In addition, individual Divisions and Departments may purchase limited quantities of specific software to support their unique requirements. It is the end user's responsibility to adhere to the terms and conditions of each individual license agreement. Specific license terms may vary if software is installed on either a government owned system or a personally-owned computer. Typically, detailed software license information is available from multiple sources, some of which include web-sites, built-in help, and/or license.doc files provided with the application.

a. Copyrighted Software. Many software applications are protected by copyright laws. Typically, these software applications may not be used concurrently on more than one system.

Prior to duplicating, transferring, or reselling copyrighted software products, users need to refer to the individual program's specific licensing stipulations and ensure that their proposed actions are not in violation of those stipulations.

b. Copyrighted, Site-Licensed Software. Some copyrighted software applications are governed by terms and conditions of various Naval Academy site licenses. Any software applications that are site-licensed to the Naval Academy must be removed from midshipmen's computers upon graduation, early separation, or at such time as their personal computer is disposed of or sold.

Violators could be subjected to punishment under federal or state laws, the Uniform Code of Military Justice, USNA Regulations, and/or the Honor Code.

c. Copyrighted, Volume-Licensed Software. It is important to distinguish between site-licensed and volume-licensed software. A site-license encompasses a location or collection of locations such as the Naval Academy and/or Naval Academy complex. A volume-license may be more focused to support the needs of specific departments, classes of midshipmen, or departmental computer labs. Licensing terms and conditions, as well as the scope of use for USNA volume-licensed software, vary among individual software applications.

d. Freeware Software.

(1) Freeware applications may be distributed freely, as the term implies, as long as they are not sold for profit. Typically, freeware applications are accessible to download from an individual provider's web-site. In addition to commercial freeware, the Department of Defense (DOD) and educational institutions also provide forms of freeware applications for a variety of uses.

(2) The Software Publishers Association (SPA) Anti Piracy Group, a Division of The Software & Information Industry Association (SIIA), offers a collection of related copyright information at their [www.spa.org/piracy/copyright/default.asp](http://www.spa.org/piracy/copyright/default.asp) web site [as of January 2002]. This site provides up-to-date information regarding appropriate use of intellectual property and recent laws related to the software copyright community.

Additional software guidelines for fair use are available in Fair Use Guidelines for Educators, compiled by Linda K. Enghagen, J.D.

e. Responsibility of USNA faculty, staff, and midshipmen. All Naval Academy faculty, staff, and midshipmen are responsible for abiding by local intellectual property policies and federal copyright laws. Due to the nature of constantly evolving software applications, license renewals, and contract variations, any specific questions concerning fair use of software programs used at the Naval Academy should be addressed to either departmental computer representatives or IT Services, [syshelp@usna.edu](mailto:syshelp@usna.edu).

8. Guidelines for Web-based media. The World Wide Web provides a means for disseminating text, audio, and visual forms of data over the Internet. In addition, a number of software applications may be run from various websites. USNA maintains web services for dissemination of information both within and outside the Naval Academy. Restricted USNA only web pages

offer possibilities for the legitimate use of copyrighted material under the fair use laws and guidelines described in this instruction. Faculty, staff, and midshipmen need to use extreme caution before posting any copyrighted materials to web pages that are accessible to users outside USNA. Incorporating material from other Internet sites should also be approached with great caution (see above).