

FRANCISTUTTLE
AN OKLAHOMA TECHNOLOGY CENTER

Copyright, Fair Use, the TEACH Act, and Blackboard

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FRANCISTUTTLE
The logo features a large, light gray lowercase 'e' that overlaps the word 'TUTTLE' and partially covers the word 'Learning'. The word 'Learning' is written in a purple, sans-serif font.

Francis Tuttle Technology Center
eLearning Department

TABLE OF CONTENTS

Purpose and Objectives	3
Formatting Conventions	3
Copyright Defined	3
Copyright and Fair Use	4
Understanding the Technology, Education And Copyright Harmonization (TEACH) Act	5
Basic Guidelines Related to the TEACH Act	5
Copyrighted Works That May Be Used for Online Teaching	5
Copyright Policy for Francis Tuttle Online Instructors	6

Purpose and Objectives

This document discusses copyright, fair use, and the TEACH Act as they relate to the design, development, content, and delivery of online courses.

Formatting Conventions

Throughout this document you'll see various symbols and specially formatted text. Here's what it all means:

- General instructions and hands-on activities are laid out in numbered lists, like this:
 1. Log into the Blackboard system.
 2. Click on the *Control Panel* button.
 3. And so on...
- Menu commands are written in the form, *Menu > Submenu > Submenu*. For example, the instructions “Choose *Edit > Copy*” would be the equivalent of the following if put into a numbered (step) list:
 1. Choose *Edit* from the menu bar.
 2. Choose *Copy* from the drop-down menu that opens.
- Important words or phrases are formatted in **bold** text.
- Text formatted in a different font is text that you need to type. In some of the hands-on activities, you may be asked to type a URL in the address bar of a browser, or to type a passage into a text box. For example, the following instructs you to type the word “appreciate” into the box provided:

Type **appreciate** into the box provided.
- Folder and file names, as well as options you may choose to select from a menu are formatted in *italics*.

Copyright Defined

Copyright is a legal protection provided to certain kinds of authored works. Copyright is automatically granted to any original work created whether or not it is ever published. That does include content found on the Internet. Copyright grants to the author of the work (whether it is audio, visual, graphic, written, etc.) the legal right to control how or whether the work will be reproduced, distributed, displayed, or performed, as well as the right to produce derivative works based on the original. A derivative work can be one in which content is used from the original to create another work. To create a derivative work using part of someone else's work, you must have permission.

Permission to use copyrighted work must come from the owner of the copyright and should be in writing. When an author gives permission for someone else to use his or her work, it is not unusual for there to be some restrictions on its use. If you want to use some or all of a copyrighted work, ask permission from the owner, and do so in writing so that you have a record of it. Obviously, your record needs to be kept for as long as you use the owner's work, or until the copyright expires. However, it is also recommended that you keep it for sometime afterwards in case a question of permission should arise after the content is out of use.

Copyright and Fair Use

Under the Fair Use Guidelines of the Copyright law, teachers and librarians are given some exceptions to copyright requirements for the benefit of education and educational-related activities. When copyrighted materials are being used within a class and as part of student education, teachers have more flexibility to use these materials without being considered to be in violation of copyright law.

For more information, visit the United States Copyright Office and review their Circular 21; Sections 107, 109, and 110 of the Copyright Act (1976) and subsequent amendments, including the Digital Millennium Copyright Act; *Fair Use Guidelines for Educational Multimedia*.

Here are two examples of the fair uses allowed under Fair Use guidelines:

- Teachers and students may use images downloaded from the Internet in student projects and teacher lessons, but they cannot be reposted onto the Internet without permission. However, students and teachers can post links to legitimate web resources. Note that if you download and use resources from the Internet, the Web site from which you obtained it must have legally acquired that item to begin with.
- Students may use portions (10% or three minutes, whichever is less) of legitimately acquired (legal copy) videotapes, DVDs, laserdiscs, multimedia encyclopedias, QuickTime movies, records, cassette tapes, CDs and audio and video clips from the Internet.

Understanding the Technology, Education And Copyright Harmonization (TEACH) Act

The Technology, Education And Copyright Harmonization (TEACH) Act that passed November 2, 2002, makes it possible for instructors to use copyright-protected materials in distance-delivered and electronic courses. The provisions of the TEACH Act do not reduce or revise the existing fair use exemptions as they apply to the use of copyright-protected materials in educational environments. It works in conjunction with the principles of fair use in the Copyright Act and ensures that teachers can use content for educational purposes which are otherwise protected by copyright law without first having to obtain special permission or license in order to provide this content in a distance education or digital environment, such as Blackboard.

Basic Guidelines Related to the TEACH Act

In order for an instructor to use copyrighted materials in an online course, the instructor and materials must adhere to the following basic principles:

1. Content must be chosen and intended for use to replicate or replace listening or viewing activities that would otherwise be conducted in a regular face-to-face classroom.
2. Content must not be used online if it otherwise would have been used **only** as student homework. If the material was intended to be used by the student outside the classroom (whether it is reading, viewing, or listening material), that copyrighted content cannot be put online and protected under the TEACH Act. (Materials intended for use in the classroom and not solely as homework can be posted to and accessed online during or after regular classroom hours and will be protected from copyright violation as per the TEACH Act.)
3. Access to any copyrighted materials used in the course must be electronically restricted to only those students enrolled in the course.
4. Digitized content must be formatted so that it is **reasonably** protected from being downloaded and saved or further disseminated by anyone with access to the content. (Sound and video files delivered as streaming media, as well as documents converted to PDF and set to allow "Read Only" access would meet this requirement.)
5. The school, program, or instructor must have legally obtained and own the original media from which the content is digitized and put online.

Copyrighted Works That May Be Used for Online Teaching

The following list is representative rather than complete in and of itself of copyrighted works that may be used for online teaching.

- **Works in the public domain.** Works in the public domain are works in which the copyright has expired, the content was given freely by the author to the public domain for use by the public without copyright restrictions, or the content was created for or

by the U.S. Government and the copyright to the work has not been conveyed by government contract to another agency. You may use any portion or all of any public domain work, as it is not copyright protected.

- **Literary works.** Literary works are written works that you would have your students read within a single class period, such as a magazine article or pages from a book.
- **Images.** Images are graphics or photos. You may use the same number of them in your online class that you would otherwise display during a single class period.
- **Performances.** Performances are any dramatic or non-dramatic delivery recorded in audio or video format. You may use what is considered to be a “reasonable and limited” portion of performance works, given the nature of the market for that kind of work and the educational purpose of the performance.
- **Digital works.** Digital works are electronic works. If they are marketed to online learning environments, you may not use any portion of them without permission, but if the entire digital work is purchased, you may use it.

Copyright Policy for Francis Tuttle Online Instructors

Francis Tuttle online instructors are expected to familiarize themselves with copyright laws as they relate to education and the development and delivery of both on-ground and online courses. As instructors who violate copyright law may be subject to civil prosecution, it is recommended that instructors always seek permission for the use of any copyright protected materials they choose to incorporate into their courses.

Regulations associated with the TEACH Act require notification of copyright policy and information at the point in which the copyrighted material is used (in the course itself). It is recommended that Francis Tuttle instructors include a copyright statement and identify permissions sought and/or received for the use of copyrighted content in each online course that they develop and/or teach.

Copyright, Fair Use, the TEACH Act, and Blackboard

With special thanks to Towson University's Center for Instructional Advancement and Technology article titled, "Using Copyrighted Works in Online Teaching," copyright 2003, Towson University, which was used as reference material in the preparation of this document.