

Copyright law and intellectual property rights are extremely complex issues. This web site should not be used as a legal guide or reference. This site is designed to function as an overview of copyright as it applies to education and to provide information regarding MiraCosta's copyright policies. If you have questions regarding a specific circumstance, please review the web sites referenced in this site or contact your \_\_\_\_\_ .

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## **Basic Copyright Principles**

### **Why Copyright?**

Educators have always utilized outside resources to enhance the learning experience for their students. These resources can range from a newspaper clipping to a book to a movie. All of these items, and many other resources, are copyrighted materials.

The Copyright Law of 1976 established the rights of the copyright holder as well as providing for the use of copyrighted materials, especially in educational settings. In order to comply with the law in the area of copyright and proper use of copyrighted materials, educators must be aware of the law and the parameters that govern proper or “fair use” of copyrighted publications (Dalziel, 1995).

There are both civil and criminal penalties for infringement of copyright law. Civil awards generally include a monetary award of up to \$1,000,000 (Mason, 1996), attorney fees, an injunction against the violator, and confiscation of the materials that used the copyrighted works (17 USC sections 502-505).

Distance educators have a unique dilemma when dealing with copyright law. Due to the time that the law was passed and the rapid advancement of technology for distance education, the provisions for education in the copyright law are often unclear for the distance education classroom.

### **What is Copyright?**

A copyright grants the holder the sole right to reproduce or grant permission to others to reproduce the copyrighted works. The copyright holder is defined as the person who owns the exclusive rights to a work. The protection is limited to original works, whether or not they have been published. However, it is the expression of the idea that is copyrighted, not the idea in and of itself (Brinson and Radcliffe, 1994).

Copyright may be held on a variety of original works which include: literary works, musical works, dramatic works, graphical works, motion pictures, sound recordings, and architectural works (17 USC section 102, and Brinson and Radcliffe, 1994).

For works created prior to 1978, copyright protection lasts 75 years from the date of first publication or 100 years from the date of creation of the work, contingent on which date allows the copyright to expire first. For works created after 1978, protection begins at the

creation of the work and lasts 50 years after the death of the author (17 USC section 104A).

University of Idaho

<http://www.uidaho.edu/eo/dist12.html>

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**The Law.** Congress enacted the federal Copyright Act to protect works of authorship. The Act gives the owner of a copyright the exclusive right to do and authorize others to do certain things in regard to a copyrighted work, including: make copies, distribute the work, display or perform the work publicly, and create derivative works.

**Original Scope of Copyright.** The Act applies to nearly all forms of captured content, including traditional works such as books, photographs, architectural drawings, music, drama and sculpture.

**Expanded Scope of Copyright.** The copyright laws have adapted to advancing technology by expanding the scope of protected works to include such things as video, motion pictures, electronic media, software, multimedia works and databases.

**Test to Determine Copyright.** A copyright will attach to an original work that is "fixed in any tangible medium of expression" (i.e., a medium that is captured in an accessible form of content).

**No Mark or Registration Necessary.** Since 1989, works are protected by copyright regardless of whether a copyright notice is attached and regardless of whether the copyright is registered.

**Public Domain Works.** Not all works carry copyrights; those in the public domain may be freely used. Any work published before 1923 is in the public domain. Works published from 1923 through 1978 are protected for 95 years from the publication date, if proper copyright formalities were followed. Since 1978, works generally have copyright protection for the life of the author plus 70 years.

**If No Exception, Seek Permission.** In academia, the three major exceptions to the copyright owner's right to control the reproduction and use of works of authorship are: the fair use exception, the library exception, and the face-to-face teaching exception. These three exceptions are described below. Unless an exception applies, you must obtain permission to reproduce copyrighted work in any medium for any purpose.

**Penalties.** The penalties for copyright infringement are harsh. A court may award up to \$150,000 for each separate willful infringement.

Stanford University Libraries

<http://fairuse.stanford.edu/etchemendy-2003-03-copyright-reminder.html>