

FLORIDA KEYS COMMUNITY COLLEGE BOARD RULE



Subject	Copyrights	Number: 6.520
Authority	F.S. 1001.64(33), 1004.726	Approved Date: 8/23/10
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Florida Keys Community College (FKCC) is an institution of higher learning providing quality educational programs and services to its students. FKCC recognizes that the copyright holder has an exclusive right to their copyrighted works but that the use of copyrighted materials is sometimes necessary to further enhance the teaching, research and scholarship activities of its faculty and staff. The college adheres to Florida Statutes, Section 1001.64(33) and 1004.726.

All students, faculty, and staff are expected to have a basic understanding of copyright law and to adhere to all laws regarding Copyright, Fair Use, the Digital Millennium Copyright Act, and the TEACH Act, and to act in good faith when using copyrighted materials to support educational and research activities. Copyrighted material includes text, music, videos, games, movies, and software. Employees who fail to comply with the copyrighted law and willfully infringe it may face fines, and civil or criminal penalties from the U.S. courts as well as disciplinary action from FKCC.

GENERAL STATEMENT

The President/Provost shall establish procedures and provide information as necessary to ensure that all faculty and staff at Florida Keys Community College (FKCC) comply with all laws including copyrighted materials to support educational and research activities.

THE POLICY AND THE STUDENT

All FKCC students are expected to have a basic understanding of copyright law and to adhere to all laws regarding copyright, Fair Use, and the Digital Millennium Copyright Act, and to act in good faith when using copyrighted materials to support their educational and research activities. Copyrighted material includes text, music, videos, games, and software.

THE POLICY AND THE FACULTY AND STAFF

All FKCC faculty and staff are expected to have a basic understanding of copyright law and to adhere to all laws regarding copyright, Fair Use, and the Digital Millennium Copyright Act, and the TEACH Act, and to act in good faith when using copyrighted materials to support their educational and research activities. Copyrighted material includes text, music, videos, games, and software.

IMPLEMENTATION AND OVERSIGHT

The President/Provost shall appoint a college ad hoc Copyright Policy Committee whose membership consists of one faculty, a student affairs representative, and administrator, a

librarian, informational technology department representative, and the Board of Trustee's Legal Counsel, to address any issues concerning the proper interpretation of this procedure and to resolve any disputes between a copyright owner and FKCC concerning infringement of a work.

The President shall designate The Board of Trustee's Legal Counsel as FKCC's Copyright Compliance Agent to receive reports of copyright infringement to convene the college wide Copyright Policy Committee, and to forward to the President a recommendation regarding action to take to address the reported copyright infringement.

VIOLATION OF POLICY

Faculty, staff and students who fail to comply with copyright law will willfully infringe it, may face fines, and civil or criminal penalties from the U.S. Courts. Employees in violation of these established procedures and requirements may be subject to disciplinary action, up to and including termination. Students in violation of these established procedures and requirements may be subject to disciplinary action as outlined in the Student Handbook.

DEFINITIONS

Copyright: the owner of a copyright has the exclusive right to do and/or authorize others to do such things as:

Make copies, distribute and display the work, perform the work publicly, and create derivative works (other works based on the original work).

Fair Use: The Fair Use limitation allows FKCC faculty, and staff to copy, view, display, and distribute copyright materials for classroom use without seeking permission.

Even legitimate copies of films or videos may be legally shown as long as they are part of a face to face instruction. Fair Use of copyrighted material is not automatic. These four factors must be considered on a case by case basis to determine if the use is fair:

Is the purpose of the use educational or commercial?

Is the nature of the work factual or creative?

What is the amount and substance of the work to be used?

Will use affect the market value of the work?

Digital Millennium Copyright Act: The Digital Millennium Copyright Act (DMCA) enacted in October 1998, amended the Copyright Act, by adding specific provisions relating to digital content. The DMCA enforces laws to prevent the circumvention of software or other technological locks that give copyright holders the right to control access, print, download, copy, or further distribute their digital works.

Teach Act: The Technology, Education and Copyright Harmonization (TEACH) Act were enacted in November 2002, as an amendment to the Copyright Act of 1976. Found in section 110(2) of the Act, it covers distance education as well as face to face teaching which have an online, hybrid or broadcast component.

The College reserves the right to change this policy at any time without prior notice or consent.

Faculty and Student Handbooks

As an institution of higher education, FKCC is dedicated to providing quality educational programs and services to its students through the formation, discovery, and dissemination of knowledge. FKCC recognizes that the copyright holder has an exclusive right to their copyrighted works but that the use of copyright materials is sometimes necessary to further enhance the teaching, research, and scholarship activities of its faculty and staff.

All FKCC employees are expected to have a basic understanding of copyright law and to adhere to all laws regarding Copyright, Fair Use, the Digital Millennium Copyright Act, and the TEACH Act and to act in good faith when using copyrighted materials to support educational and research activities. Copyright material includes text, music, videos, games, movies, and software. Employees, who fail to comply with the copyright law and willfully infringe it, may face fines, and civil or criminal penalties from the U.S. courts as well as disciplinary action from FKCC.

Copyright

The owner of a copyright has the exclusive right to do and/or authorize others to do such things as:

- Make copies
- Distribute the work
- Perform the work publicly
- Create derivative works (other works based on the original work).

FKCC employees are permitted to use certain exemptions to the copyright law which prevent copyright violations and allow many beneficial activities to proceed. These include Fair Use and the TEACH ACT, which allow, under certain conditions, the use and copying of copyrighted material for education and research. For use that falls outside the scope of Fair Use and the TEACH Act, faculty must secure permission or alter delivery plans.

Fair Use

The Fair Use limitation allows faculty and staff to copy, view, display, and distribute copyrighted materials for classroom use without seeking permission.

Even legitimate copies of films or videos may be legally shown as long as they are part of face-to-face instruction. Fair Use of copyrighted materials is not automatic. These four factors must be considered on a case-by-case basis to determine if the use is fair:

1. Is the purpose and character of the use educational or commercial?
2. Is the nature of the work factual or creative?
3. What is the amount and substance of the work to be used?
4. Will use affect the market value of the work?

Fair Use does not allow a work to be copied repeatedly term after term without permission. Fair Use applies to all copyrighted works regardless of the media in which they are fixed: print, electronic, or multimedia. Educators may also want to consider the [Fair Use Guidelines provided by the Copyright Compliance Center](#).

<http://www.copyright.com/Services/copyrightoncampus/basics/fairuse.html>

Works in the Public Domain

Permission is not needed for copyrighted works that is in the public domain. (ex. Publications dated 1922 or earlier), freeware, data or fact compilations, ideas, most U.S. governments, and works published before January 1, 1978, that do not have a copyright notice or for which the copyright has expired.

Digital Millennium Copyright Act (DMCA)

The Digital Millennium Copyright Act (DMCA) enacted in October 1998, amended the Copyright Act, by adding specific provisions relating to digital content. The DMCA enforces laws to prevent the circumvention of software or other technological locks that give copyright holders the right to control access, print, download, copy, or further distribute their digital works. Under DMCA, it is a civil and criminal offense for anyone to circumvent anti-piracy measures in software, to disseminate software or other copyrighted digital material without permission, or to manufacture code cracking devices. Fair Use is not a defense to the criminal act of unauthorized circumvention.

Distributing copyrighted materials over the Internet for which the faculty or staff member does not have permission is a violation of the DMCA. It is illegal to download music, games, or videos through peer-to-peer file-sharing programs without permission or to use such types of software on the college's network. The recreational downloading of copyrighted materials is a violation of both federal law and college policy. This law is enforced by federal investigators and by the owners of copyrighted materials.

As a non-profit educational institution and an Internet Service Provider (ISP), FKCC is afforded some protection of civil liability, the institution will:

- Take measures to protect against unauthorized access,
- Devise a reasonable way to limit unauthorized dissemination after access has been acquired,
- Only acquire lawfully produced copies of copyrighted works for performance or display,
- Designate the College Attorney as FKCC's Copyright Compliance Agent to receive reports of copyright infringement,
- Register the agent's name and address with the Copyright Office,
- Have a posted Copyright Policy and educate faculty, staff and students about copyright, and comply with any "take down" requests on material that has been infringed.

FKCC abides by the provisions of DMCA, which requires a prompt response to claims of copyright infringements by copyright holders or their agents. If a faculty or staff member

willfully infringes while teaching, studying or conduction research, FKCC will not be held liable and additional disciplinary action will occur.

Technology, Education, and Copyright Harmonization (TEACH) Act

The Technology, Education and Copyright Harmonization (TEACH) Act were enacted in November 2002, as an amendment to the Copyright Act of 1976. Found in section 110(2) of the Act, it covers distance education as well as face-to-face teaching which has an online, hybrid, or broadcast component. At the institutional level, FKCC has in place the necessary technological provisions for faculty and staff to take advantage of the TEACH Act. At the teaching level, considerable responsibility is placed on faculty and staff who must comply with all criteria of the TEACH Act if they wish to take advantage of the exemption. If the TEACH Act does not apply, faculty and staff must consider Fair Use, seek permission, or use an alternate item or method of delivery.

To comply with the TEACH Act's provisions, the institution, faculty, and staff will appropriately apply each criteria on to the performance or display of electronic materials placed within courseware maintained by FKCC before using the exemption:

- FKCC is an accredited nonprofit educational institution.
- FKCC has a policy regarding copyright.
- FKCC provides information and materials that promote and describe U.S. copyright laws.
- The amount of a copyrighted work performed without obtaining a license depends on the type of work:
 - An entire non-dramatic literary and musical work may be performed.
 - Only a limited and reasonable portion of other works such as audiovisual works and motion pictures may be performed. These works may not be performed in their entirety without a license.
 - Display of copyrighted works such as graphics, photographs, short poems, etc., in the online classroom must be comparable to that typically displayed in a face-to-face classroom.
- The works used are not part of textbooks, course packs or other materials in any format that are typically purchased or acquired by students for their independent use and retention.
- The work performed or displayed is at the direction of or under the actual supervision of the instructor.
- The work is part of systematic mediated instructional activity and is an integral part of the class session.
- All copies transmitted are lawfully made or acquired.
- The transfer of a work in analog format to digital is limited to what is “reasonable and necessary” to meet the course objective with no digital version available to the institution or if available contains technological measures that prevents its lawful use in the course.
- No portion of a work produced or marketed solely for online instruction is performed.
- FKCC provides information and notices to students that copyrighted materials may be utilized in a course syllabus:

- “The materials and content provided for a face 2 face course or on a password-protected instructional website are intended only for registered Florida Keys Community College students who have paid their tuition and fees to attend this course. Materials that are affected include, but are not limited to, text, still images, audio recordings, video recordings, simulations, animations, diagrams, charts, and graphs. Every effort has been made to insure these materials are not disseminated to anyone beyond those who have legally registered for this course. Download, revision, or distribution of course material with anyone other than registered classmates and the instructor is strictly prohibited.
- FKCC will transmit performances and displays of copyrighted materials only to currently enrolled students in the course.
- FKCC will take reasonable technological measures to prevent retention and/or dissemination of copyrighted electronic works for longer than the prescribed time period, normally a single class session.
- No FKCC employees will interfere with technological protections taken by copyright owners.
- FKCC will utilize authentication technology to resist access to copyrighted materials placed within a course.
- Copyrighted images and graphics will only be made available in a format that limits printing and saving.
- Copyrighted electronic materials such as video and audio will be streamed to avoid the downloading and saving of the file or control of the content is maintained via passwords or time limits applied to the internal hyperlink or folder access.

Obtaining Permission

If an FKCC employee wants to utilize a work that is protected by copyright and the use of the work is not a “fair use” and no statutory exemptions apply to the use of the work, then permission must be obtained from the copyright owner or one of the organizations that obtain permission before the work can be used. If one is unsure whether or not permission is needed, or if needed but is not yet received, the work cannot be used. Infringing on the owner of a copyrighted work may subject the employee and FKCC to legal action, including but not limited to being forced to stop using the work and/or paying financial penalties.

Training

The Librarians, and the Technology Support Services Department will provide training on Copyright, Fair Use, the Digital Millennium Copyright Act, and the TEACH Act. Proper use of the College’s computer network, software and email is available in the College’s Policy & Procedures, Board Rules, Faculty Handbook, and Student Handbook. There are also links to copyright tutorials and information about copyright on the College’s Library’s Web page. All FKCC faculty, staff and students are expected to avail themselves of the training so they are able to adhere to all laws regarding copyright.

College Web Pages

Performances and displays of copyrighted materials not created by employees should not be available on a college web page unless:

- Permission from the copyright holder has been obtained

- FKCC has a license that permits such use of the work
- The Web page is password protected and available only to students currently enrolled in the class

To avoid a copyright issue, it is preferable that the faculty or staff member link to content found on an open and free Web page or in a subscription database obtained by the library.

The College reserves the right to change this policy at any time without prior notice or consent.