CNM Libraries Copyright Policy

Overview

Purpose: The Central New Mexico Community College (CNM) Libraries’ Copyright Policy articulates the Libraries’ responsibilities and informs staff and patron use of copyrighted and licensed intellectual property. The Libraries’ Copyright Policy is consistent with the provisions of United States Copyright Law, including the doctrine of Fair Use, the Copyright Revision Act of 1976, the Chaffee Amendment (1996), the Digital Millennium Copyright Act (DMCA) of 1998, the TEACH Act (Technology, Education and Copyright Harmonization) of 2002, related federal and state laws, court decisions and the terms of license agreements entered into by the Libraries. Library Copyright Policy is directly governed by the CNM Institutional Technology Use Policy (ITUP), Employee Handbook, Student Code of Conduct, and Academic Dishonesty Policy. The policy follows and recommends the principles of the Association of Research Libraries (ARL) Code of Best Practices in Academic and Research Libraries.

Description: This policy, with its included recommendations, and related guidelines and forms covers use, duplication, and distribution of copyrighted and licensed information resources provided by the Libraries, in any medium or format. The terms of the policy extend to library-provided systems and equipment, and to the Libraries’ public, instructional and administrative services, including print and online publications. Guidelines address student, faculty and staff responsibilities and uses of protected intellectual property. Copyright educational programs and information services are designed to help minimize risks of accidental infringement, while supporting personal, scholarly, educational, and transformative uses of information consistent with copyright law and the mission of the college.

Goals:

1. Inform and educate the CNM community on applications of copyright law in the creation, dissemination and use of intellectual property.
2. Train and support students, faculty, and staff to understand and exercise their rights while respecting the rights of others.
3. Detail provisions of the law and legally binding licenses to help ensure good-faith assessment of fair and allowed uses, and equal access to information.
4. Help to lower the risks of accidental copyright infringements or license violations

Note: This policy and related documents provide information, education and assistance. They do not constitute legal advice, confer any legal rights, supplant any license, or substitute for permissions to use copyrighted or licensed materials when those are required. If you believe you need legal advice or assistance contact an attorney specializing in intellectual property listed with the New Mexico State Bar Association.

Questions concerning copyright guidelines may be directed to the Libraries Copyright Coordinator. The Copyright Coordinator provides copyright education, supporting materials, and consultations. See the online Research Guide “Copyright Information” for detailed information.

Copyright Responsibilities

4/20/2016
CNM Libraries guard against copyright violations through a combination of policy, technological controls, and copyright information as required by law, in order to ensure our continued ability to provide information resources. Faculty, staff, and students are individually responsible for becoming knowledgeable about their rights and responsibilities related to copyright and intellectual property and for applying reason and discretion to reach informed good-faith ethical and legal decisions with regard to the use of copyrighted and licensed materials. The Libraries provide services and resources to assist such decision making.

Individuals are legally responsible for their own personal and professional copyright decisions. Responsibilities and expectations include, but are not limited to:

- Observing institutional policies, user or license agreements, and posted information
- Recognizing and understanding the basics of copyright law and its provisions
- Determining whether material intended for use is protected by copyright or license
- Determining whether an intended use of protected material is allowable
- Identifying and locating the copyright holder when an intended use falls outside the scope of fair use or a license agreement; obtaining and documenting appropriate permissions, when required
- Attributing original authorship accurately
- Maintaining accurate records of source information, fair use analyses, permissions requests and occasions of use when warranted
- Including copyright information with protected materials
- Posting copyright warnings and limitations of use when using protected materials

It is the responsibility of the patron to read and follow the terms of licenses or borrowing agreements, and related policies, and to determine whether a proposed use is a Fair Use under copyright or an allowed use under an applicable license.

Librarians are available to help patrons find and use basic copyright information, and online educational guides and tools are available to assist students, faculty and staff with specific responsibilities.

**Student Rights and Responsibilities**

Students are encouraged to use CNM-provided technology, information and services ethically and responsibly in the pursuit of their personal, educational and career development goals, and are responsible for compliance with Information Technology Use Policy (ITUP), Student Code of Conduct and Academic Dishonesty Policy, and the CNM Libraries Copyright Policy.

**Guidelines are provided by the Libraries to increase student understanding of copyright essentials applied to common or frequent student activities involving use of protected materials including:**

- Accessing reading or study materials for a course
- Collecting and citing materials for research and critical writing
- Using sources for original or transformative creative work
- Personal use of streaming media
- Clubs and service organizations

**The Libraries support, promote and will assist students with the skills of:**

- Distinguishing between protected and unprotected works
- Identifying personal, scholarly and creative Fair Uses which are excluded from copyright protection
- Determining reasonable quantities of copies of copyrighted materials under Fair Use.
- Locating, understanding, and applying the “terms of use” provided by websites and licensed databases
- Embedding links to materials legitimately available online, subject to their terms of use.
- Properly quoting, paraphrasing and summarizing cited works to avoid plagiarism
- Attributing authorship
- Finding copyright information for a work
- Understanding the relationship between copyright violations and plagiarism
- Using prepared citations and citation tools provided in the libraries databases, research guides and help resources.
- Finding and using citation guides or manuals.
- Use of adaptive software to make the contents of a work more accessible to the individual user, based on their learning needs.
- Protecting creative work

**Excluded and prohibited uses of equipment and resources which fall outside of Fair Use include:**

- Making excessive use of copies to avoid purchase of reasonably available material
- Making or sharing copies of materials when prohibited by the provider
- Sharing or distributing copies of protected materials in any format (file sharing)
- Public performance or display of protected materials, especially entertainment media.
- Using licensed materials in violation of their terms of use
- Downloading or sharing unauthorized copies of protected materials
- Use of others’ intellectual property as if it were your own – specifically failure to cite your sources or “plagiarism”, regardless of whether the source is protected or not.
- Inappropriate or excessive appropriation.

**Violations**

Violations of CNM policies may result in loss of privileges, academic consequences, and/or disciplinary actions by the Office of Student Conduct.

Violation of copyright law (infringement) or the terms-of-use of any license or user agreement may have academic, financial and legal consequences.

If in doubt, please ask for information or assistance.
Copyright help available to students

Students may:
- Request help finding and using copyright and citation information at the Libraries Helpdesk. Questions that cannot be answered at the desk will be referred to the copyright coordinator.
- Refer to the online guides.
  - Guide to Copyright Information: http://subjectguides.cnm.edu/copyright

Faculty Rights and Responsibilities

In addition to the general rights and responsibilities of students, Faculty have the right to use materials within the provisions for personal, scholarly and academic Fair Uses and are similarly responsible for compliance with Copyright Law, its provisions and extensions including application of Fair Use Exclusions, DMCA, The TEACH Act, and subsequent legislation as established in the Information Technology Use Policy (ITUP) and the Employee Handbook. For practical applications, see the Libraries Guide to Copyright Information and the copyright section of the Distance Learning Guidebook for Faculty. Further faculty bear the responsibility of ensuring that student assignments do not promote or seem to promote copyright violations.

Recommended Practices are provided for faculty using copyrighted and licensed intellectual property in:
- Face-to-face and online instruction
- Development of teaching materials, research, scholarly writing, and creative work
- Assigned student work
- Campus activities

Faculty users of information should be aware that:
- Not all available or accessible material is “free” for use
- Not all personal, scholarly, or educational uses qualify as Fair Use
- Fair Use requires clear intention, purpose, knowledge of the work to be used
- Fair Use provides for limited use
- Many educational uses exceed copyright Fair Use and require permissions or licenses
- Library database and creative commons licenses grant general permissions making sharing easier, while their terms of use may impose specific restrictions
- Terms of use vary by provider and may allow more or less than what Fair Use allows
- Licenses are designed to minimize the need for specific permissions for most uses, while protecting the content
- Minimization of copyright risks involves planning, research, assessment, and documentation.
- The Libraries provide resources to assist the processes of evaluating, requesting and recording permissions

Faculty Members have the right to:
- Use works from the Licensed databases according to their terms of use without express permission
- Save single copies of protected works for personal and scholarly use
- Make their own good-faith Fair Use determinations
- Make limited numbers of copies essential for instructional use
• Request that legitimate copies be placed on reserve in the Libraries
• Inquire about exceptions and special cases
• Receive help with copyright information, best practices, and procedures.

Basic copyright and Fair Use information for instructors

• Instructor-initiated copying/scanning and limited distribution of protected works to students for (one-time) inspired instructional use may be considered a Fair Use
• Subsequent or repeat uses are typically not considered Fair Uses
• A good-faith Four Factor Fair Use Analysis should be performed before such copying, distributing or performing a work.
• Any use which confuses original authorship/ownership of copyrightable content, takes the place of the original work, or harms the market for a copyrighted work is not a Fair Use.
• A copy of a Sample Permissions Letter is provided online, to be used as a form.
• The TEACH Act Checklist is provided if copied materials will be posted online.
• Instructors should be aware of the strictures of DMCA anti-circumvention clause, prohibiting circumvention of the software protecting original digital media content from copying, before setting out to make their own copies of digital media.
• Complete copyright information, including the author’s name, title of publication from which an excerpt was made, the date of copyright, and whether the work is “used by permission of the copyright holder” or “used according to license” should accompany all copies.

Licensed online electronic database content may help instructors avoid many copyright headaches, when used with understanding of the rules and principles and with forethought for how the materials will be posted, accessed and used. Licensed content simplifies access to instructional material, promotes ethical sharing of copyrighted intellectual property, and facilitates correct attribution. The following facts apply:

• Identical content may be used by multiple instructors, for multiple courses, over multiple terms
• Permanent URLs or “permalinks” may be embedded in assignments in CNMLearn
• Each (student) use is a single personal use
• Citations, abstracts and full-text may be emailed from the database
• Concurrent citations in multiple formats are provided
• Attribution information is provided for works of visual art
• CNM Libraries do not track individual’s search, access or use histories
• Aggregated statistics help the Libraries determine resources to fund
• Database content is ‘portable’ if you teach at multiple institutions which offer the same databases
• CNM faculty, staff and students may gain access to UNM databases on a limited basis by visiting one of UNM’s libraries, and requesting access
• Individuals may submit Interlibrary Loan (ILL) requests for specific content not offered through CNM’s databases, for personal use.

Common educational uses which exceed Fair Use or license terms-of-use
The following practices risk violating copyright, artist’s rights, DMCA, the TEACH Act or the terms of license agreements:
1. A copy of protected material is distributed to students in a face-to-face classroom setting OR posted within the distance learning CMS (CNM Learn) or MyCNM on a repeated basis, i.e. multiple semesters in sequence or repeat semesters separated in time by a single instructor.

2. A copy of protected material for a single course, taught by multiple instructors in multiple sections or in succession is distributed in class or posted within the Distance Learning CMS (CNM Learn) without permission.

3. The amount of copyrighted material distributed to students in a single course and section represents a significant portion of a readily available work, for example:
   a. multiple chapters from a single book
   b. more than one article within a single publication/volume of a journal
   c. entire short works of creative fiction or poetry
   d. excessive quantity used constitutes unfair competition in the market for the original.

   Examples 1-3 exceed Fair Use.

4. Any copy of protected work is made available without copyright notice and either a citation or an attribution.

5. Sections of protected works are copied and pasted together, formatting or details are changed to alter the appearance of the original(s) and create the appearance of unity, and the work is used without attribution.

   Examples 4 and 5 are both plagiaristic and copyright violations

6. A saved copy of a work obtained from the internet or Libraries’ databases is posted, emailed or printed and distributed to others.

7. A Creative Commons work or an Open Educational Resource (OER) is used, modified, or distributed in excess of the license terms of use.

   Examples 5, 6 violate the terms of license agreements.

8. A copy of rented online streaming media intended for personal use is shown in class or to a group.

9. Copies of student work is used for online teaching purposes beyond the class in which they are registered without explicit written notice permissions.

10. Use of protected works for non-educational (outside of regularly scheduled for-credit classes) college purposes such as meetings, retreats, public gatherings, professional development, cultural enrichment, publicity, entertainment or reward.

   Examples 8 - 10 exceed license agreements or Fair Use.

**Recommended faculty practices for avoiding problems and minimizing risks:**

1. In cases where the intended use exceeds fair use (ex. 1,2,3 above) or the limitations of the license agreement, written permission from the copyright holder is advised, and should be kept on file by the faculty member, or by the department chair or coordinator in cases where multiple faculty teach the same course, using the same materials, over multiple semesters. Copies of permission letters or emails from copyright holders must be provided to the Library before duplicated materials may be placed on Reserve in these cases. (See Libraries Reserves Policy)
2. In cases where the desired material is available through the databases, or online, (ex. 4, 5, 6) faculty are advised to cite or attribute the work appropriately and post the permanent URL or permalink, rather than distributing saved copies. Each student use is then a single personal scholarly use, fair use analysis is not necessary, and permissions are not required.

3. When protected works are posted electronically, copyright warnings such as the following should appear prominently. “Materials may be copyrighted and/or licensed to others and are not intended for use or distribution outside of this class”; AND citation information, or attribution in the case of visual art, should accompany each work.

4. In cases where the entire work is available for personal rental, but is not available in licensed form (ex. 7) it should be accessed directly at the source by the individual. If available for sale, a copy should be purchased as soon as available, for classroom use. If limited sections, clips or stills are desired for specific criticism or commentary, these may be justified as Fair Use notwithstanding DMCA. (Note that neither the Libraries nor AVS may digitize individual media titles for streaming.)

5. Reformatting copied and pasted sections of protected works is not sufficiently transformative to support a fair use defense when significant portions of the original work(s) remain recognizable and intact; no significant original creative content, critical commentary or new interpretation is introduced; no new purpose is served that was not served by the original(s).

6. When using student works either ask students for permission to use specific works created under your instruction, indefinitely, and get a signed written response or an electronic signature if you plan to use them as teaching examples in the future or systematically inform students in a course or program that submitted works may be used for classroom instructional and other educational purposes. Attribute these works as appropriate respecting the student’s authorship, and their right to privacy under FERPA, removing any unnecessary personal identifying information.

7. In summary, faculty are advised to:
   - Understand the scope of copyright and the limits of Fair Use exclusions, restrictions of DMCA and requirements of the TEACH ACT;
   - Perform and record the results of an impartial, reasoned, good-faith four-factor Fair Use analysis when indicated;
   - Contact rights holders any time the use of a protected work is determined to exceed the provisions of the Fair Use exclusions;
   - Obtain and keep on record explicit written permission before using protected intellectual property.
   - Post copyright information and limitations of intended use with all content, regardless of ownership or origin.

Copyright resources for faculty and academic administrators
For detailed information and a complete guide to copyright information see the online Research Guide to Copyright Information.

Library Staff Responsibilities

Library professional staff will:

- Answer common copyright questions
- Provide copyright information and guidelines

4/20/2016
Library staff do not:

- Give copyright answers that exceed their level of expertise or amount to legal advice
- Make copyright decisions for others
- Make or provide copies in violation of any law or institutional policy
- Allow or encourage patrons to violate copyrights.

Library staff have the right to decline requests which they have reason to believe may be in violation of copyright, and to request copyright documentation when providing services according to this policy.

Provision of library materials and assistance does not constitute transfer of copyrights or permission to use materials in any way that exceeds their terms of use.

The **Libraries provide**: copyright information, education, and assistance, including:

- Authoritative books and articles on copyright in the libraries collections
- Instruction, guidelines, and tools for locating, assessing, using, and documenting information sources suitable for sharing, subject to their expressed terms of use
- Limited individual assistance locating resources and copyright information
- Citation help and plagiarism prevention resources
- Licensed electronic databases to simplify sharing content.

The **Libraries do not:**

- Take responsibility for monitoring individual uses
- Keep records of copyright decisions made by patrons.
- Perform extensive copyright research on specific works for individual patrons.

I. **Library Applications of Copyright**

Provisions and extensions of Copyright law apply to the following areas of Library services.

1. Access to Electronic Database Content
2. Interlibrary Loan – see Policy
3. Academic Course Reserves – see Policy
4. Library publications, marketing and outreach
5. Library operations and professional activities

4/20/2016

1. Access and Use of Licensed Electronic Database Content and E-books (E-resources)

The online library catalog (Worldcat Local) and the electronic databases are searchable by the public.

Full access to licensed electronic content (E-resources) and patron account features are provided exclusively to “authorized users” who are qualified patrons of CNM Libraries:

- Currently registered CNM students, faculty, and staff.
- Paid CNM Guests with an active CNM computer account, user name and password.
- Patrons from other New Mexico Consortium of Libraries (NMCAL) members, bearing a Joint Use Agreement “passport” from their home institution who have obtained a CNM Guest ID from Student Services. There is no charge to NMCAL members.

Access to content within the databases by non-qualified persons may be arranged through Interlibrary Loan (ILL) through an academic library or local public library, subject to the limits outlined in the Interlibrary Loan Policy.

Definition and content

E-resources are protected by contractual license agreements. Databases provide online access to e-books, e-reference, magazine, newspaper, scholarly, trade and professional journal articles, streaming media, still images, interactive college and career success materials, and more.

Accessibility features

Electronic databases provide a variety of built in accessibility features available without special qualification, assistance, or permissions such as text-size modification, read-aloud options, and closed-captioned video. In the case that assistance or permissions are required for accessibility of particular content by persons with a disability, ask at the Libraries Helpdesk and see the ADA Policy.

Availability of content

Most, but not all, content is searchable on personal electronic devices, and available as downloadable files, readable by common wireless devices. However, due to the variety of devices, variations in wireless service, and the special features and limits placed on some media, the Libraries cannot guarantee uniform remote access to all electronic content from all devices at all times.

If access problems occur, contact the Library Help Desk staff at 224-3274 or email reference@cnm.edu.

“Terms of use”, “license terms”, “user rules” or “user agreements”

Terms of use for each database provider can be viewed from within the database. In general, all databases from a given provider, e.g. Ebsco, Gale, follow the same terms of use; while terms of use vary between providers. If in doubt whether an intended use is allowed, contact the Libraries Help Desk or Libraries Copyright Coordinator.

4/20/2016
Database licensing terms represent legal contracts, which may be more specific and restrictive than copyright law, and which are not subject to the Fair Use exclusions. E-resources are designed to be accessed electronically using the functions provided. Individual databases vary in their accessibility features and terms of use. Some require passwords for use, and some may be used on-campus only. See the descriptions for each in the list of Libraries Databases.

The following general rules apply to all CNM Licensed databases, and are accepted practice.

**Acceptable uses of E-resources include the individual rights to:**

- Keep one electronic copy for storage, personal, scholarly, and noncommercial use
- Make one printed copy of provided content, for personal, noncommercial use
- Email electronic copies of database content to self and other authorized users
- Embed permalinks to licensed content within CNM password protected content management software (CMS) CNM Learn.

**Unacceptable uses of E-resources include, but are not limited to:**

- Retaining copies of works for the purpose of redistribution
- Distribution of saved copies, in any medium or format, by any means, for any purpose
- Obscuring or removing copyright notices or information included in the materials;
- Infringing or plagiarizing use of the materials
- Copying, downloading or attempting to copy or download an entire issue of a journal or an entire E-book; commercial use of the materials
- Accessing, saving, printing, or attempting to access, save or print material that is not made available without password access or permission.
- Access by unauthorized persons, not affiliated with CNM
- CNM database content may not be used to teach at other institutions which do not offer those same databases
- Access to or unauthorized copies of database content offered by other institutions, but not by CNM should not be shared with CNM classes or individual CNM students.
- Individual CNM students may request specific items via Interlibrary Loan or use Joint-Use Privileges at other NMCAL Libraries. See Interlibrary Loan, below.

**Patron privacy**

In order to respect patron privacy, CNM Libraries do not track individual database use, but do use aggregate statistics to aid in administration. Patron accounts, set up within the databases under their terms of use, are protected; and the information stored therein is not shared by the database provider. In the event of a violation of the terms of use, reported to us by the licensor, it is our obligation to cooperate with their investigation. In case of detected violations, privacy rights are waived.

**2. Interlibrary Loan Service (ILL)**
The Libraries ILL service provides qualified patrons with access to items which we do not license or own; and makes eligible materials in its collections available to qualified libraries, subject to copyright and license restrictions. See Interlibrary Loan Policy.

3. Academic Course Reserves

Reserves help ensure enrolled student’s academic success by providing access to course materials within the provisions of copyright law. See Academic Course Reserves Policy.

4. Library Publications, Marketing and Outreach

Library publications, marketing and outreach honor the copyright and terms of use of licensed materials. Publications and displays include:

- Libraries webpage, instructional and educational materials
- Outreach and marketing materials
- Public performance of media and displays of visual art
- Publicly accessible online catalog

5. Library Operations and Professional Activities

Library technical services, systems and administration actively work to protect copyright.

6. Library Copying, Duplicating, Scanning and Printing

Copying, duplicating, scanning and printing are affected by copyright. “Copying” includes the making of a duplicate, by any technological means, as well as the conversion from one format to another. The terms stated for “photocopies” extend to all forms of copying.

Patron-initiated copying (print and electronic)

Patrons are responsible for following copyright Fair Use guidelines when copying protected materials for personal use. In general, the Libraries may not be held liable for copyright infringement based upon a library patron's unsupervised use of copying equipment located on the premises, provided that the equipment prominently displays a notice that the making of a copy may be subject to terms of the copyright law.

All photocopiers and scanners in CNM Libraries and Library computer labs will display this copyright warning notice, in a visible place on or adjacent to the equipment.

“COPYRIGHT WARNING NOTICE – The Copyright Law of the United States (Title 17, U.S. Code) governs the making of photocopies of copyrighted materials. The person using the equipment is liable for any infringement.”
Library-initiated Copying

Library staff are responsible for following copyright guidelines when copying protected materials for library, professional or personal use, or for use by patrons.

Patron Requests for Copies

Library staff may make copies for students on an individual and limited basis following copyright and fair use guidelines.

Library staff have a right to refuse requests for copies which they believe may be in violation.

Copying by or for ADA Qualified Individuals - Accessibility

The Library provides licensed adaptive software to make copyrighted materials in the library accessible to patrons who would not otherwise be able to access those materials because of recognized disabilities. The Library may also, at its discretion and as resources allow, make copies of copyrighted, licensed and technologically protected works in its collections available for use by qualified individuals, using adaptive software as outlined below. For information on access to ADA Services at CNM Libraries see the Libraries Accessibility Policy.

Extension of Access to Library-owned and Licensed Audio-visual Materials

The Libraries may take advantage of the provisions of U.S. copyright law and its amendments to make available to its patrons works in its collection existing in a variety of media and formats, including the following categories of works which the Librarian of Congress deems exempt from the DMCA prohibitions against circumvention of technological protection measures, and within Fair Use:

- Literary works, distributed electronically, that prevent the use of read-aloud functionality or interfere with screen readers or other applications or assistive technologies for persons who are blind or have other disabilities.
- Motion pictures on DVD for use of short portions for the purpose of analysis, criticism or commentary
- Noncommercial videos and documentary films, for educational purposes
- Nonfiction multimedia e-books offering visual or film analysis, for educational purposes
- Motion pictures via online distribution services for use of short portions for critical and educational purposes.
- Motion pictures on DVDs where circumvention is required to enable screen capture for the purposes listed above
- Motion pictures via online distribution services where circumvention is required to enable screen capture for the purposes listed above.
Archive and Replacement Copies of works in the Libraries’ collections
The library may, at its discretion, make up to three digital copies to preserve access to a library-owned item which is damaged, deteriorating, lost, stolen, or in obsolete or soon-to-be obsolete formats after conducting a thorough search for replacements available for sale in the marketplace at an affordable price. The purpose of such copies is to provide for future access to materials relevant to the mission and scope of the libraries collections which might otherwise become unavailable, not for convenience or financial gain.

The following conditions apply to the making of archive copies:
• The Libraries are open to the public
• Items are made available to CNM students, faculty, staff and guests
• Archive and replacement items may not be distributed digitally or made available in a digital format outside the premises of the college libraries.
• Publicly accessible catalog records must reflect the item’s existence as an archival copy, its copyright status, and its limitations of use
• All copies must carry a notice of original copyright.

Related Copyright Educational Materials.
Copyright educational materials available through the CNM Libraries may be found in the Research Guide.

Presentations, workshops and consultations available by request.

References:
This document relies extensively on public domain material provided by the United States Copyright Office and on proprietary material provided by CNM on its public website. These are interpreted and applied here, to guide and assist practical decision-making. Authority rests with the original law and policy. Please report any errors or omissions to the Libraries Copyright Coordinator.

United States Copyright Law
Fair Use Exclusions
Guide to Copyright
TEACH Act
Digital Millennium Copyright Act - DMCA

The CNM Employee Handbook
Student Code of Conduct
Institutional Technology Use Policy