Procedure 2-5: Instructional Copyright and Performance Licensing

Copyright protection subsists, in accordance with United States Copyright Law, 17 U.S.C. 101-1332, in original works of authorship fixed in tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- 1. Literary works;
- 2. Musical works, including any accompanying words;
- 3. Dramatic works, including any accompanying music;
- 4. Pantomimes and choreographic works;
- 5. Pictorial, graphic, and sculptural works;
- 6. Motion pictures and other audiovisual works;
- 7. Sound recordings; and
- 8. Architectural works.

In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Only copyrighted materials are subject to the restrictions in this procedure. Because a copyright notice is not required for copyright protection of works published on or after March 1, 1989, most works (except those authored by the United States Government) should be presumed to be copyright protected, unless further information from the copyright holder or express notice reveals that the copyright holder intends the work to be in the public domain.

Accordingly, all employees and students, of the San Jacinto Community College and any other individuals using works maintained by the College should follow these procedures. Copying of materials or other uses not specifically allowed by the law, fair use, license agreement, or the permission of the copyright holder is strictly prohibited. Employees and students who willfully disregard copyright policy are in violation and do so at their own risk and assume all liability.

The College designates the Educational Technology Office to exercise general oversight of the copyright function for the College and to assure that information about the law and procedures are available. Every attempt will be made to assist employees who need information so that they can perform their duties within the intent of the law.

The Fair Use Doctrine is a component of the U.S. Copyright Law. It allows for the use of copyrighted materials, without gaining authorization, based on the weighing of four factors:

- 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- 2. The nature of the copyrighted work;
- 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- 4. The effect of the use upon the potential market for or value of the copyrighted work.

No one factor alone determines a person's right to use a copyrighted work without permission.

Notice that the Fair Use Doctrine does not grant permission for use of copyrighted material simply on the grounds that it is to be used for educational purposes.

The Technology, Education and Copyright Harmonization (TEACH) Act was signed into law in October, 2002. The TEACH Act amends Sections 110(2) and 112 of the Copyright Act of 1976 to give instructors at accredited nonprofit educational institutions greater flexibility to use third party copyrighted works in online course delivery. The act permits the display and performance of virtually all types of works during online instruction without the consent of the copyright owner, provided that:

- 1. The online instruction at an eligible institution is mediated by an instructor.
- 2. The transmission of material is intended only for receipt by students enrolled in the course, regardless of where the students are physically located.
- 3. The institution employs measures to prevent "retention of the work in accessible form by recipients of the transmission for longer than the class session."
- 4. The institution employs measures that limit the transmission of the material to students enrolled in the particular course and precludes unauthorized student retention and/or downstream redistribution "to the extent technologically feasible."
- 5. Use of the material is clearly for educational purposes.

If the reproduction of the copyrighted materials does not meet the "fair use" or "TEACH Act" guidelines, College employees must seek authorization through the Educational Technology Office. A permanent central repository of all written copyright authorizations, releases, or waivers will be established in the Educational Technology Office. Copies of such authorization will be sent, as appropriate, to the bookstore, library, or other student support areas.

College contracts and agreements for performance rights (e.g., ASCAP, BMI) are maintained in the Educational Technology and the Purchasing Offices. This office will coordinate reports to licensing agencies with campus performance departments. Questions relating to College performance rights and any associated rights should be directed to the Educational Technology Office.

All instructional personnel will successfully complete copyright training offered by San Jacinto College every two years beginning in fall 2015. Training will be assigned through the San Jacinto College SPARK system.

Defense of Employees. If permitted by State law and procedures, San Jacinto Community College may defend any employee against a civil action alleging copyright infringement where (a) the use is in accordance with the provisions of a valid software license agreement, (b) the permission of the copyright owner has been obtained, or (c) the Office of General Counsel has determined that the use is otherwise permissible. Otherwise, the employee will be personally responsible for the defense of a civil action for copyright infringement.

Posting of Notices. San Jacinto Community College offices are responsible for posting notices reflecting this policy at all computer and photocopying stations that may be used for reproducing copyrighted materials (e.g., in departmental copy rooms, libraries, and at or near all computer stations). The following is a suggested form of notice:

"Copyright Notice"

"Copying, displaying, or distributing copyrighted works may infringe on the owner's copyright. The Educational Technology Office at San Jacinto Community College can help you determine whether your use of a copyrighted work is a fair use or requires permission. Any use of computer or duplication devices

that infringes on copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law."

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