

1 File Sharing and Copyright

Federal copyright law applies to all forms of information, including electronic communications. Users of the Northwood Technical College technology should be aware that copyright infringement includes the unauthorized copying, displaying, and/or distributing of copyrighted material. All such works, including those available electronically, should be considered protected by copyright law unless specifically stated otherwise.

Northwood Technical College complies with all provisions of the [Digital Millennium Copyright Act](#) (DMCA). Any use of the Northwood Technical College network, email, or website to transfer copyrighted material including, but not limited to, software, text, images, audio, and video is strictly prohibited. Therefore, the use of peer-to-peer file sharing programs is, in most cases, a violation of the College policy and federal law.

1.1 Software Copyright

It is the intent of the Northwood Technical College and its employees to abide by the provisions of the copyright laws affecting microcomputer software programs. In order to encourage observation of the copyright laws and to prevent the illegal use of microcomputer software, this enforcement will include:

1. College employees are required to adhere to the provisions of Public Law 96-517, Section 7(b), which amends Section 117 of Title 17 of the United States Code to allow for the making of a back-up copy of computer programs. This states that ". . . it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:
 - a. that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or
 - b. that such a new copy and adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful."
2. Illegal copies of copyrighted programs may not be made or used on College equipment.
3. Software owned by the College may not be used by any College employee, their agents or students in any manner which violates copyright law.
4. When the software is to be used on a disk-sharing system, efforts will be made to secure the software from copying.
5. College employees, their agents, and students are personally responsible for any violation of copyright laws which occur due to the use of College equipment or software. The liability insurance protection of the College does not cover such violations.
6. Software license agreements for the College may only be signed by employees of the College designated by the College President. Each regional campus using the software shall have a signed copy of the software agreement for local control.

1.2 Ownership, Use, Copyright and Control of Coursework and Instructional Materials

Developments of original works that require copyright protection are a vital part of the academic community. To that end, the College encourages and supports the creative, intellectual efforts of its employees. The following is applicable to all employees of the College, is intended to clarify what constitutes a copyrightable work and the intellectual property rights of the individual and the College in creative works.

1.2.1 Definitions

For the purposes of this Handbook, the following terms have these meanings:

- A. Author: Someone who contributes copyrightable expression to a Work.
- B. College: Except where specifically defined otherwise, means Northwood Technical College.
- C. College Resources: Any and all resources provided by the College to support the employee's course and scope of employment including, but not limited to, the use of buildings, equipment, facilities, computers, software, supplies, personnel, research assistance, and funding.
- D. Copyright Act: The Copyright Act, as amended in 1976.
- E. Copyrightable Works: Works of authorship that are fixed in a tangible, reproducible medium. Copyrightable Works must be in a tangible form of expression, which means copyright protection does not extend to ideas, procedures, methods, systems, or facts.
- F. Derivative Work: Work based upon one or more preexisting Works, including but not limited to, revised versions, annotations, elaborations, translations, or transformation of a Work that constitutes original authorship.
- G. Work Made for Hire Doctrine: Pursuant to 17 U.S.C. § 201(b), a "Work made for hire" is a Work prepared by an employee within the scope of his or her employment or a Work specially ordered or commissioned for use as a contribution to a collective Work and agreed to in writing between the parties to be a Work for hire, which falls into one of the following categories:
 - 1. A part of a movie, an audio Work, or an audio-visual Work
 - 2. A translation
 - 3. A supplementary work
 - 4. A compilation
 - 5. An instructional text
 - 6. A test
 - 7. Answer materials for a test
 - 8. An atlas; or
 - 9. A sound recording
- H. Coursework: Work prepared or created by College employees, with or without the use of College resources, for the purpose of teaching or in connection with a College course. Examples of coursework include, but are not limited to the following: lecture, notes, materials, classroom exercises, handouts, quizzes, exams, books, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, titles, course competencies, course conditions, course criteria, student outcome assessment feedback report, program matrix, films and film strips, slides, charts, transparencies and other audio visual materials, video and audio recordings of presentations, programs or performances, programmed, instructional materials and computer programs, computer software,

educational multi-media projects incorporating various copyrighted media formats, including, but not limited to, PowerPoint presentations, motion media, music, text materials, graphics, illustrations, photographs, and digital software which are combined into an integrated presentation.

- I. Employee: A College staff member, including but not limited to, an educator of the College who has an employment relationship with the college or an adjunct instructor who has an adjunct instructor relationship with the College.
- J. Personal Work: Work created *outside* of the course and scope of the employee's employment with the College and *without* the use of College Resources.
- K. Work: Any original Work of authorship created by a College employee.

1.2.2 Ownership Interests

The ownership rights to a Work shall be determined generally by the following provisions; however, ownership may be modified by a written agreement between the Author and the College and/or other sponsoring entity. Although not exclusive, examples of each category of Works are provided.

- A. Coursework: The College is the owner and legal author of all Coursework pursuant to the Work Made for Hire Doctrine, unless otherwise expressly agreed to in a written agreement executed prior to the development of a Work or prior to the beginning of the project which results in a Work being produced. Among the exclusive rights that the College, as the owner and legal author of the Coursework, enjoys are:
 - 1. The right to authorize others to reproduce the Work,
 - 2. The right to prepare Derivative Work or authorize another to do so,
 - 3. The right to publicly display, distribute and perform the Work, and
 - 4. The right to license others to utilize the College's rights.

Employees who create Coursework are restricted by copyright law from utilizing the Coursework outside the employees' scope of employment with the College without the written consent of the College.

Additionally, the College shall have sole and exclusive rights to any/all royalties and fees for all Coursework and its Derivative Work. Examples of copyrightable Coursework are listed in the definition above.

- B. Personal Work: The creator of a Personal Work is the owner and legal author of such Work, unless there is an agreement to the contrary. An example of a Personal Work is a novel created by a College employee, completely unrelated to the employee's scope of employment with the College, created without College resources, and created on the employee's own time.
- C. Independent Contractor's Work: When the College establishes an independent contractual relationship with an individual for the specific purpose of producing Copyrightable Work at the College's expense or with the use of College Resources, the College is the owner and legal author of such work pursuant to the Work Made for Hire Doctrine. The Independent Contractor shall sign an assignment of such Work to the College, at the College's discretion and request. An example of an Independent Contractor's Work is software created by an independent contractor specifically hired by the College for that purpose, at the College's expense or with the use of College Resources.
- D. Other Works: When Copyrightable Works are produced by a College employee under circumstances wherein the resultant work would not be considered a Work Made for Hire, and are produced with the support and resources of a third-party, or external sponsor, then a separate written agreement between the employee and the third-party sponsor shall determine the copyright and ownership rights of the parties. However, if the employee's activities are such that the development would result in a Work Made for Hire, then the agreement must be subject to the College's approval. At no time during the development, production, or implementation of the Copyrightable Works shall the College employee's development efforts compromise the employee's duties

of employment with the College or violate any of the College's policies, including any policies on conflicts of interest.

1. When Copyrightable Works are produced by College employees under any of the conditions described in Paragraph D. above, it is necessary for the project participants and the College to enter into a written agreement. The agreement must be made prior to the beginning of the project and must define the rights and responsibilities of the participants and the College. The Agreement shall, among other things, state that:
 - a. The Vice President, Academic Affairs, or his/her designee, shall be responsible for determining whether the project is suitable and reasonably related to the mission of the College.
 - b. The project participants shall be responsible for obtaining clearances or any permission necessary or desirable for the use of the College's copyrighted materials that are planned for inclusion in the project.
 - c. The participants also shall be responsible for producing any agreements, waivers and releases or rights, if necessary, in connection with their contributions to the project.

An example of a Copyrightable Work which falls into this Other Works category is a textbook, whose subject matter is closely related to the employee's teaching subject but the employee writes the textbook on his/her own time using his/her resources or a third party's resources.

1.2.3 Basic Copyright Principles to Guide College Employees' Use of Copyrighted Materials

- A. **Educational Exemptions.** All Copyrightable Works, regardless of their lawful owners, are subject to certain limitations and exceptions in their use. Four limitations are especially important to educators because they allow educators to make use of Copyright Works without first obtaining permission from the lawful owners of the Copyrightable Works. This includes all Works that belong to the College.
 1. **Fair Use.** The Fair Use Doctrine states that any person may make "fair use" of copyrighted materials without obtaining permission from the copyright owner. The use of copyrighted materials may be considered "fair" by considering the four factors below:
 - a. **The purpose and character of the use.** If the use of a Work is for educational, non-profit, or personal uses instead of commercial uses, there is a greater likelihood that such use is "fair use".
 - b. **The nature of the Work.** Material that is factually based and published will lend itself to fair use more than use of material that is imaginative and unpublished.
 - c. **The amount and substantiality of the portion used in relation to the Work as a whole.** Use of smaller portions of a Work weigh in favor of fair use as opposed to larger portions of a Work. For example, use of a one-page excerpt of a book/text may be fair use, versus copying the entire chapter.
 - d. **The effect on the market for the copyrighted material.** Use of one's Work which would adversely impact the copyright owner's economic expectations weighs heavily against "fair use". Although no single factor is decisive, this fourth factor is often considered the most important if the other factors are inconclusive.

“Fair use” is defined on a case-by-case basis, with all four factors considered as a whole, based on the totality of the circumstances. The law allows educators to make multiple copies of portions of copyrighted materials if the copying meets the requirements of “brevity, spontaneity, and cumulative effect.” However, the law does not permit educators to copy whole book chapters or journal articles in “course packets” without the permission of the copyright owner.

- Brevity – A maximum of 2,500 words for an article, story, or essay.
- Spontaneity – The decision to use a Copyrightable Work and the moment of its use are so close in time that seeking permission is unreasonable.
- Cumulative Effect – The copying of the material is for only one course in the school in which the copies are made. Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

2. Face-to-Face Teaching Exemptions. The Copyright Act allows “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction.” § 110(1). This means performance or display of lawfully copyrighted materials, such as acting out a copyrighted play or reading a copyrighted book, in a face-to-face classroom setting is permitted.
3. Distance Education Exemption. The Copyright Act allows copyrighted performances or displays permitted in the classroom to be transmitted by closed-circuit television or the Internet to other students, such as in a distance learning situation. § 110(2).
4. Reproduction for the Blind or other People with Disabilities Exemption. The Copyright Act also allows for educational institutions to produce copies of Copyrighted Works in braille, audio or digital text to use by students who are unable to read standard text.

B. **Copyright Infringement:** Copyright Infringement occurs when an individual reproduces, displays, distributes, performs, or prepares a Copyrightable Work without first obtaining permission from the copyright owner. Copyright infringement of a legal owner’s rights may result in substantial monetary damages.

1. The College takes all potential Copyright Infringement claims seriously and shall undertake such efforts, as it deems necessary, to preserve its rights in Copyrightable Works in which the College is the sole or joint owner of intellectual property rights.

1.2.4 Transfer of Rights

The College may, in its sole discretion, assign, transfer, and lease or sell all or part of its legal rights.

1.2.5 College Use of Income

The College’s income derived from ownership of any Copyright Works and/or inventions normally shall be applied to the Northwood Technical College Foundation unless other purposes are deemed more appropriate by the College’s Administration. This income shall be utilized to finance educational research, curriculum development, and programs that assist in the development and improvement of instruction, and in keeping with the College’s mission, goals and objectives.