

# Procedure Manual



<b>Title:</b> Copyright Procedure for Employees	<b>Number:</b> A6Hx2-8.05A
<b>Legal Authority:</b> <i>United States Constitution Article I, Section 8; Title 17 of the U.S. Code; Florida Statutes: 1001.65</i>	<b>Page:</b> 1 of 4

## EMPLOYEE PROCEDURE

As an institution of higher learning, Broward College (BC) is dedicated to providing quality educational programs and services to its students through the formation, discovery, and dissemination of knowledge. BC 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.

All BC 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. Copyrighted 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 BC.

### **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
- Display the work
- Perform the work publicly
- Create derivative works (other works based on the original work).

BCE 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.

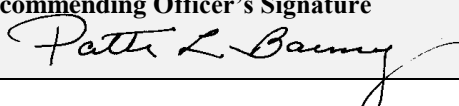
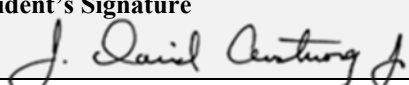
### **Fair Use**

The Fair Use limitation allows BCE 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.

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Educators may also want to consider the Fair Use Guidelines for Educational Multimedia when creating multimedia projects.

### Works in the Public Domain

BC employees do not have to obtain permission for copyrighted works that are in the public domain (i.e., publications dated 1922 or earlier), freeware, data or fact compilations, ideas, most U.S. government documents, 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)

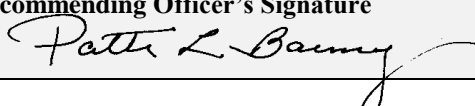
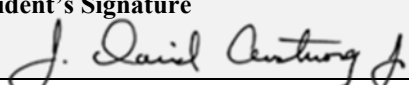
The Digital Millennium Copyright Act (DMCA) enacted in October 1998, amended the Copyright Act, by adding specific provisions relating to digital content. The DMCA enforces laws to prevent the circumvention of software or other technological locks that give copyright holders the right to control access, 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), BC is afforded some protection of civil liability if a faculty or staff member commits an infringement. In order to limit its 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 BC'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 and staff about copyright, and
- Comply with any "take down" requests on material that has been infringed.

BC abides by the provisions of DMCA, which requires a prompt response to claims of copyright infringement by copyright holders or their agents. If a faculty or staff member willfully infringes while teaching, studying, or conducting research, BC will not be held liable and additional disciplinary action will occur.

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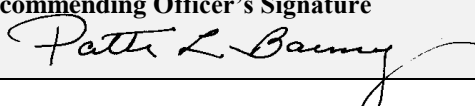
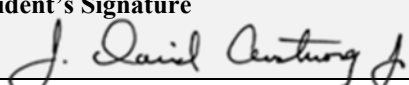
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### Technology, Education, and Copyright Harmonization (TEACH) Act

The Technology, Education and Copyright Harmonization (TEACH) Act was 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, BC 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 criterion to the performance or display of electronic materials placed within courseware maintained by the BC before using the exemption:

- BC is an accredited nonprofit educational institution.
- BC has a policy regarding copyright.
- BC 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 format 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.
- BC provides information and notices to students that copyrighted materials may be utilized in a course. Faculty must place the following notice prominently within each course site and/or on each course syllabus:
- "The materials on this course Web site may be subject to copyright protection and are only for use by students enrolled in this course for purposes associated with this course and may not be retained or further disseminated."
- BC will transmit performances and displays of copyrighted materials only to currently enrolled students in the course.
- BC 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.

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- No BC employees will interfere with technological protections taken by copyright owners.
- BC will utilize authentication technology to restrict 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 a BC 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 BC to legal action, including but not limited to being forced to stop using the work and/or paying financial penalties.

### Training

The Staff Development Department and the Instructional Technology 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 e-mail is posted on the College’s Web site in BC’s Policy and Procedures Manual, Section 8.

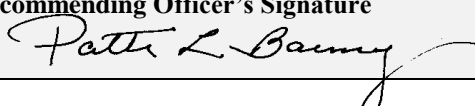
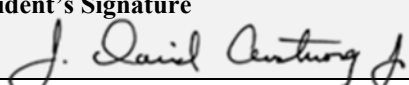
There are also links to copyright tutorials and information about copyright on the University/College Library’s Web page. All BC faculty and staff are expected to avail themselves of the training so they are able to adhere to all laws regarding copyright.

### Faculty and Department Web Pages

Performances and displays of copyrighted materials not created by employees should not be available on a faculty or department Web page unless:

- Permission from the copyright holder has been obtained,
- BC has a license that permits such use of the work, or
- 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.

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