



FACULTY COUNCIL RECOMMENDATION

MCTC/FACULTY OOC COMMITTEE – AY 2021-2022

RECOMMENDATION:

Adopt the attached Ownership of Scholarly & Creative Works document as a BOG policy to replace/update the current Administrative Procedure regarding ownership of this type of content.

RATIONALE:

At the end of Spring 2020, some faculty expressed concerns regarding ownership of the content that was now present in Blackboard, such as instructional videos and other materials they created in response to COVID. Some faculty refused to place any content in Blackboard until ownership rights were clearly articulated. The Director of Distance Education & the OOC were then tasked to create a document specifying ownership of online content to help alleviate these concerns.

A draft of the Ownership of Scholarly & Creative Works document was created by the OOC and approved through Faculty Council in Fall 2020. This was then given to administration who sought legal counsel. The comments from legal were passed back to the OOC in Spring 2021 for additional consideration. In the meantime, it was passed as an Administrative Procedure to establish a precedent for ownership of online content during our emergency response.

During Spring 2021 and Fall 2021, the OOC members reviewed Intellectual Property policies from peer institutions in response to the comments provided by legal. We found that many peer institutions had this as a BOG policy rather than as an Administrative Procedure. Additionally, their policies were written to cover all scholarly and creative works by faculty, staff, students, and administration rather than just online content created by faculty. As a result, the OOC revised that document to similarly protect all employees and students employed by or enrolled at Mountwest.

This revised document was reviewed by legal, and in December 2021, the OOC was sent a new document from legal: “a template our legal team has worked on with regard to copyright, scholarly works, etc.” The document was largely found to be satisfactory by the OOC, with the exception of a lack of a definition for Significant Use of College Resources. The OOC created a definition, added it to the document, and aside from that, the document from legal remains unchanged.

In March 2022, through discussions between the OOC and Mountwest’s CAO, several provisions were added to the document to further clarify the delineation between college-owned content and creator-owned content as well as how this content can be used in emergency situations for continuity of education.

Since the revised document (1) clearly specifies ownership of content, (2) gives ownership of customized course content to the creators except where specified, and (3) aligns with the recommendation from legal, we recommend the attached Ownership of Scholarly & Creative Works document be adopted as a BOG policy to more thoroughly protect ownership rights of this content and to align with what peer institutions have done.

MCTC CHIEF ACADEMIC OFFICER'S RESPONSE

Constitutional guidelines require a response within 15 days. If approved for further action please forward to the Academic Council.

APPROVED: M/8 M/9 mas DATE: 5/4/22

COMMENTS:

DISAPPROVED: _____ DATE: _____

REASON DISAPPROVED:

MCTC PRESIDENT'S RESPONSE

Constitutional guidelines require a response within 15 days. If approved for further action please forward to the Academic Council.

APPROVED: _____

DATE: _____

5-4-22

COMMENTS:

Approved as procedure.

Discuss as policy next year.

DISAPPROVED: _____

DATE: _____

REASON DISAPPROVED:

SUBJECT: Copyright Policy and Laws

REFERENCE: US Copyright Act, United States Code Title 17 Chapters 1 – 8 and 10 – 12

ORIGINATION:

EFFECTIVE:

REVIEWED:

SECTION 1. PURPOSE

- 1.1 The purpose of this policy is to establish guidance to the individual concerning the proper use of copyrighted materials under the federal Copyright Act and to encourage administration, faculty, staff, and students to use legal methods to acquire copyrighted materials.

SECTION 2. SCOPE AND APPLICABILITY

- 2.1 Applies to all Mountwest Community and Technical College administration, faculty, staff, and students as already designated by our other procedures and policies.

SECTION 3. DEFINITIONS

- 3.1 Copyright – Exclusive legal right to reproduce, publish, perform, sell, or distribute a work or derivative of a work that is given to the author or creator of the work. Copyright is also the legal right one can obtain from the creator to share the work. Under federal copyright law, copyright subsists in “original works of authorship” which have been fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. These works include:
 - 3.1.a Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases or bibliographies;
 - 3.1.b Musical works, including accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works, if fixed (as in notation or video);
 - 3.1.c Pictorial, graphic, and sculptural works, including photographs, diagrams, sketches, and integrated circuit masks;
 - 3.1.d Motion pictures and other audiovisual works, such as videos;
 - 3.1.e Sound recordings; and

- 3.8 Significant Use of College Resources – The use of College facilities, staff, or funds beyond those normally available to members of the College community. Use of assigned office space, normal clerical support, and routine use of library resources, computers, software, and office supplies are not considered significant use of College resources. Presence of content on College authorized servers does not automatically assign ownership to the College.

SECTION 4. POLICY

- 4.1 This policy is intended to protect the rights of authors and creators of copyrighted works. It is also intended to inform College administration, faculty, staff, and students of the rules and consequences for infringing on the rights of authors and creators whose works are copyright protected. This institution will not be held responsible or liable for any monetary award granted to any author or creator upon a finding of infringement by a court of competent jurisdiction.

SECTION 5. GENERAL PROVISIONS

- 5.1 The materials that are copyrighted are protected during the life of the author and up to 70 years after the author's death or, in the case of works for hire or anonymous/pseudonymous works, 95 years from publication or 120 years from creation, whichever is shorter. It is up to the person desiring to use the material to determine whether the item is protected by copyright or not. A copyright does not have to be registered to be protected.
- 5.2 The College's personnel shall have all rights in copyright for their personalized course materials and scholarly works, while the College's students shall have all rights in copyright for all intellectual property created without the use of substantial College resources. The College owns all rights in copyright for work produced under third-party agreements as stated in those agreements; for intellectual property created by personnel in the scope of their employment (other than personalized course materials or scholarly works) or with the use of substantial College resources; and by students with the use of substantial College resources.
- 5.2.a. The college maintains the right in emergency situations, where the faculty member is unable to continue, to use course content for no more than one term following the separation of the faculty member from the college. The administration of course content in emergency situations will reside with the Chief Academic Officer.
- 5.2.b. Personalized course content is owned by the creator, and it is the creator's responsibility to clearly indicate which works they have created. If course content is not clearly labeled, then it is presumed that all content in the course can be used by the College royalty-free for educational and administrative purposes. Otherwise, the College can only use the non-personalized (i.e., not labeled) content from any course for educational and administrative purposes.

materials semester after semester may not be considered a fair use, because there is enough time to seek a license from the copyright holder to use the work.

- 5.3.e Fair use is an important doctrine, but should be used with caution. There is no formula to ensure that a predetermined percentage or amount of a work – a specific number of words, lines, pages or copies – may be used without permission.
- 5.3.f None of these four factors described herein and set forth in the law is conclusive, and the weight to be given to each will vary in each instance. It is difficult to predict whether a particular use will fall within the scope of fair use, because the analysis is highly fact-specific.
- 5.4 Library database articles are readily available to our users. These materials are free to individuals with authorized access to read, view, or listen to, even if it is copyrighted. If an article is used more than the contract allows, the library will see if the material can be purchased for use in that specific case.
- 5.5 Section 108 of the copyright law provides limited exceptions for libraries and archives to make copies in specified instances for preservation, replacement, and patron access. These exceptions will generally not apply to faculty, students, or staff outside of the library.
- 5.6 Digital Millennium Copyright Act (DMCA). – An amendment to copyright law that criminalizes production and dissemination of technology, devices or services intended to circumvent measures that control access to copyrighted works (commonly known as digital rights management or DRM) and the act of circumventing an access control, whether or not there is actual infringement of copyright itself. The DMCA also heightens the penalties for copyright infringement on the internet.
 - 5.6.a In addition to the safe harbors and exemptions the statute specifically provides, Section 1201(a)(1) requires that the Librarian of Congress issue exemptions from the prohibition against circumvention of access-control technology. Exemptions are granted when it is shown that access-control technology has had a substantial adverse effect on the ability of people to make non-infringing uses of copyrighted works, including educational and accessibility uses.
 - 5.6.b The Librarian of Congress is required to update these exceptions every three years. The 2018 list of exceptions can be found here:
<https://www.copyright.gov/1201/2018/faqs.html>
- 5.7 Public Domain Works. – Once a copyright expires, a work is said to be in the public domain. Once a work is in the public domain, anyone can copy, distribute, display, or modify the work without permission from the copyright holder.
 - 5.7.a Most materials found on the internet, even if publicly available for free, are not in the public domain and are subject to copyright protection.

6.5 All areas where copiers are located will have a brief statement about copyright placed within sight of the copiers.