NAVAL POSTGRADUATE SCHOOL
Monterey, CA 93943

MEMORANDUM

FROM: Provost and Academic Dean
TO: NPS Community

SUBJ: COPYRIGHT REMINDER: USE OF COPYRIGHTED MATERIALS

I am sending this annual copyright reminder to the Naval Postgraduate School (NPS) to raise awareness about the appropriate uses of copyrighted materials in NPS activities. You should note that personal works that you write are outside the scope of this reminder and you should seek your own legal advice with regard to use of copyrighted material in such works.

NPS recognizes that faculty, students, staff and contractors need to use a range of materials for instruction, research, scholarly presentations, and in publications (including capstone project reports and theses) that are created in the course of their official duties. Materials used may include U.S. federal government-created works (which are not subject to copyright in the U.S.) or copyrighted materials (such as most book chapters, journal articles, figures or images).

It is important for NPS authors to understand that while copyright law gives exclusive rights to copyright owners, the law also balances those rights by allowing for limited uses of copyrighted materials in an educational setting. Allowable uses of copyrighted works may include: what is called a “fair use” of copyrighted material; performing/displaying copyrighted material in face-to-face teaching; using limited amounts of copyrighted material in distance learning environments; and specific uses by libraries and archives.

As part of NPS’s commitment to assuring proper use of materials for teaching, research, scholarship, and official Government uses, NPS provides the following assistance:

a) **NPS Copyright Policy, NPSINST 5870.1 (17 June 15)**
b) **Guide to Copyright at NPS** [http://libguides.nps.edu/copyright/] that includes:
   i. information, guidance, and examples of scenarios;
   ii. tools and resources to help individuals determine copyright status and ownership of materials;
   iii. tools and resources to help individuals determine whether use of a work in a specific situation would be a fair use;
   iv. information on how to obtain permission to reuse copyrighted materials;
   v. specific guidance for NPS students and faculty.
c) NPS experts who can provide assistance with evaluating copyright issues in specific circumstances.
Definitions -- What is Copyright?

U.S. Copyright Law (Title 17 U.S. Code and amendments) protects original works of authorship fixed in a tangible medium of expression for a limited period. The World Intellectual Property Organization and the Berne Convention for the Protection of Literary and Artistic Works protect international copyrights and all signatories to the Berne Convention, including the United States, agree to uphold the copyrights of other signatory nations.

Copyright protection is afforded to a wide variety of works in all formats (audio, digital, print, or visual) including but not limited to: articles from print or digital publications; TV and radio programs; films and documentaries; music performances; photographs, drawings and figures; training materials; manuals and documentation; software programs; databases; and materials posted on the Internet.

Copyright ownership confers specific, exclusive rights to the copyright owner for a "limited" time including:

- a) the right to reproduce or authorize reproduction of the work;
- b) the right to prepare or authorize derivative works based on the original;
- c) the right to distribute copies or authorize others to do so;
- d) the right to perform or display the work publicly.

Note that works may be protected even if they are not registered with the U.S. Copyright Office and even if they do not carry the copyright symbol (©).

Copyright protection is not available for works prepared by employees of the U.S. federal government as part of their official duties. These works may be freely used without permission (and are commonly referred to being in "the public domain"). However, proper citation of the source/author for such works is appropriate. Other works in "the public domain" that may be freely used without obtaining permission from the copyright owner include:

- a) works for which the term of copyright has expired;
- b) works for which the author failed to satisfy statutory formalities to secure their copyright.

Policy:

It is the policy of the Naval Postgraduate School that NPS faculty, students, staff, and contractors abide by the Copyright Law of the United States as well as adhere to the Secretary of the Navy’s instruction on copyright (SECNAV 5870.4A).

NPS faculty, students, staff and contractors may not reproduce any copyrighted work in audio, digital, print, or visual form in violation of the law. Before using copyrighted materials NPS faculty, students, staff, and contractors are required to:
a) determine copyright status of a work;
b) review licenses, terms and conditions associated with each copyrighted work (such as Dudley Knox Library content licenses or a Creative Commons license attached to the work);
c) evaluate and document whether or not a proposed use falls within one of the exemptions in the copyright law;
d) when no exemption applies, obtain permission from the copyright owner or her/his agent, which may include the payment of royalties and fees.

Limitations on Exclusive Rights of Copyright Owners:

a) **Fair Use**

The Fair Use exemption provides a code of best practices that allows certain uses of copyrighted materials without permission of the copyright owner in some circumstances that do not interfere with the owner’s exclusive rights to control the use of their work. Fair use is intended to allow use of very small portions of copyrighted materials for commentary, parody, news reporting, research, and educational instruction.

Fair use is evaluated based on a “four factors test”, and courts consider each factor separately when reviewing allegations of copyright infringement. The four factors test evaluates the:

1) purpose of the use (e.g. educational versus commercial);
2) nature of the copyrighted work (factual versus creative);
3) amount of the material used (the greater the amount used, the less likely it is a fair use);
4) effect of use on the potential market for or value of the work.

It is important to note that all uses in an academic context are not automatically considered fair use, and the fair use exemption is dependent on the facts of each use.

More at: [http://libguides.nps.edu/copyright/fairuse](http://libguides.nps.edu/copyright/fairuse)

b) **Classroom Exemptions for Face-to-Face Teaching**

Copyright law provides exemptions for specific face-to-face teaching use of limited amounts of copyrighted materials via single copies for instructors and multiple copies for student learning. This exemption also prescribes how much and what types of audio/visual materials may be used in face-to-face teaching.

More at: [http://libguides.nps.edu/copyright/faculty/copyrightclassroom](http://libguides.nps.edu/copyright/faculty/copyrightclassroom)
c) **TEACH Act (Technology, Education and Copyright Harmonization Act of 2002) for Digital Transmission to Students Outside the Face-to-Face Teaching Environment**

The TEACH Act is an amendment to U.S. Copyright Law that allows accredited, non-profit educational institutions and some government entities to use, display or perform some digital materials in synchronous or asynchronous online distributed learning (DL). There are extensive rules that must be observed by the instructor, the student, and the institution in order to use copyrighted materials under the TEACH Act. The Library points to a checklist and common scenarios that will help you comply.

More at: [http://libguides.nps.edu/copyright/faculty/teachact](http://libguides.nps.edu/copyright/faculty/teachact)

**Link to Library-licensed resources:**

Loading copyrighted reading materials (such as PDFs) into a course management system (such as Sakai or Moodle) creates an online “course pack.” Such use may or may not be fair use and might (or might not) qualify under the classroom exemption, but the TEACH Act specifically does not provide an exemption for such use. You must make a case-by-case determination for each use of each work; you may need to request permission from copyright owners; and you may be required to pay royalties or fees to use copyrighted materials in NPS course management systems.

Instead, consider linking to the content that the Library licenses for your use. Linking is safe – the publisher/copyright owner controls access by limiting access to those who are connected to the Dudley Knox Library in our own network. The Library has negotiated licenses in place for use of these resources, and some publishers specifically allow loading the actual PDF into your course website, while others prohibit you from doing so and require you to link to the publisher’s website. When in doubt, check the Ask a Librarian website at [http://libanswers.nps.edu/](http://libanswers.nps.edu/).

You may link to general resources on the web, but should be careful about selecting the sites to which you link. You may be held liable for contributory copyright infringement if you link to a site that is knowingly hosting copyrighted material outside the bounds of copyright law (for example, some “pirate”/offshore peer-to-peer video streaming services). It is always best to link to the “version of record” found on a publisher’s website or to a copy in an institutional repository (such as Calhoun, the NPS institutional archive at [http://calhoun.nps.edu](http://calhoun.nps.edu)).

**Obtaining Permissions:**

To use a copyrighted work outside of the limitations and exemptions above, you must first obtain the rights holder’s permission to reproduce copyrighted works in print or digital formats. NPS faculty, students, staff and contractors of NPS must procure rights from the copyright holder or an authorized rights agency such as the Copyright Clearance Center for print materials [http://www.copyright.com/](http://www.copyright.com/), ASCAP for musical works [http://www.ascap.com/licensing/](http://www.ascap.com/licensing/), or specific media and film companies and their agencies.
Handling Allegations of Copyright Infringement:

NPS expects its faculty, students, staff, and contractors to be responsible consumers and respectful users of copyrighted materials and to help educate their peers on copyright compliance.

If any member of the NPS community witnesses a potential copyright infringement, please bring the matter to the attention of the individual as well as to the Associate University Librarian or Office of General Counsel.

Please refer all inquiries that allege possible copyright infringement to the NPS Office of General Counsel, who will work with the Department of the Navy and the Department of Justice for response and action, if any.

Questions?

Questions on copyright may be directed to the Associate University Librarian or Office of General Counsel.

Questions on how to pay fees and royalties should be directed to an authorized Purchasing Agent via the NPS Contracting Portal.

Additional resources:

Copyright at NPS
http://libguides.nps.edu/copyright

Frequently Asked Questions about Copyright: Issues Affecting the U.S. Government


Frequently Asked Questions About Copyright and Computer Software – Issues Affecting the U.S. Government with Special Emphasis on Open Source Software

Steven R. Lerman

This reminder is not legal advice.
You should seek assistance on copyright questions from the Associate University Librarian or Office of General Counsel.