

Guidance for Creating E-Textbooks

Offered by MnSCU Colleges and Universities

Introduction:

This document identifies the images, videos, papers, articles, etc. (collectively as “Works”) that can be used in self-authored E-Textbooks *made available to students through MnSCU college and university resources*, such as D2L or a college/university website. These self-authored E-Textbooks can utilize sections in the copyright act that are applicable to non-profit colleges and universities; such as Section 110(2) *a.k.a.* The TEACH Act. These sections of the Copyright Act are not applicable to E-Textbooks that are offered by for-profit publishers.

Background:

There are two general categories of materials; those protected by copyright and those that are not. Unprotected works can be used in any capacity or manner in an E-Textbook. Copyrighted works must be used in a manner that complies with copyright law and avoids allegations of copyright infringement. There are two sections of the Copyright Act that allow for the use of copyrighted information in an E-Textbook without the copyright holder’s permission; §107 Fair Use and §110(2) The TEACH Act. Either one can be used to justify the inclusion of copyrighted materials in an E-Textbook without the copyright owner’s permission.

Content

The following materials may be used in an E-Textbook without fear of copyright infringement.

1. Faculty materials when used by the faculty member who owns the “copyright” to the materials or when written permission has been obtained from the faculty member/owner of the materials.

2. Unprotected works which are not eligible for copyright protection:

- Works created by the United States Federal Government, when used in the United States.
- Works for which the copyright has expired (current protection lasts life of the author + 70 years). Use <http://librarycopyright.net/resources/digitalslider> to determine if a copyright has expired.
- A work which the copyright holder has stated in a signed writing that all copyright rights have been relinquished and the work has been transferred into the public domain.
- Ideas, facts, data, procedures, methods, systems, processes, concepts, principles, discoveries or devices, as distinguished from a description, explanation or illustration of any of these that involves some creative expression. They are said to lack the “minimal” amount of expression needed to be copyrighted.
- Mere listings of ingredients or contents, such as in recipes.
- Works consisting entirely of information that are naturally occurring or self-evident facts containing no original authorship, such as the white pages of telephone books, standard calendars, height and weight charts, mathematical formulas and equations, and tape measures and rulers.

3. Orphaned Works which are works no longer in print or publication and after a reasonable and good faith search, the copyright owner is unknown.

4. Copyrighted Materials that are permissible to use under Section 110(2) of the Copyright Act. A [TEACH Act checklist](#) must be completed for each work to determine if the type of work and the amount to be used are permitted by the TEACH Act. Keep each completed TEACH Act Checklist with a hard copy print out of the E-Textbook as evidence that the developers had a reasonable and good faith belief that their use of each copyrighted work was permissible under the TEACH Act.

In order to use copyrighted materials in an E-Textbook under the TEACH Act, only one copy of the E-Textbook is permitted to be made on a MnSCU college/university server which is then streamed to students through a password protected software program or Learning Management System such as D2L. Student access to the E-Textbook must be terminated after the course has ended. See the TEACH Act Handout for specific examples of works permitted under the Act.

5. Copyrighted Works that are permissible to use under Section 107 Fair Use of the Copyright Act. A [Fair Use checklist](#) must be completed for each work to determine if the work and the amount to be used would be a “fair” use, thus not requiring the copyright holder’s permission.

In order to use copyrighted works through fair use, make one copy of the E-textbook as in #4 above or multiple copies of the E-Textbook on CDs. The number of CDs created should be equal to the number of students enrolled in the course. A few extras may be created for students enrolling late in the course.

Post the appropriate Copyright Warning on all E-Textbooks:

“The materials on this course web site are only for students enrolled in this course and may not be retained or disseminated to others.”

OR

“The materials in this E-Textbook are only for students enrolled in this course and may not be retained or disseminated to others.”

Post this warning on videos contained within an E-Textbook or Online Course.

“The performance of these copyrighted materials are permitted under the TEACH Act. Viewing is restricted to students enrolled in this course. This material is not to be retained or further distributed.”

Include a copyright notice with all copyrighted information used in the E-Textbook.

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6. Copyrighted Works in which permission from the copyright holder has been obtained in a written, signed document (e.g. permission letter, license or subscription agreement, etc.).

Linking to Content

E-Textbooks may contain links to content available on the internet or in a library's e-reserve system. Linking to the content, as compared to making a digital copy and including it in the E-Textbook, avoids allegations of copyright infringement.

- Linking to a website with relevant materials/information is a "Best Practice"
- Linking to content on the internet is 100% compliant with copyright law.
- Linking to content made available through a subscription/license agreement or license must be permitted by the subscription/license agreement. Some of these low cost agreements prohibit "direct" linking and require the students to go through a library's e-reserve system. If direct linking to content is desired, an upgrade to a more expensive subscription/license agreement should be considered if cost effective.

Preserving the Right to Use the E-Textbook

When contracting with a faculty member(s) to develop an E-Textbook, use the *Specially Commissioned Work Agreement* template to ensure the college/university has the right to use the E-textbook for three years. Agreement templates are made available by the System Director for Intellectual Property. Just email a request and the most recent templates will be emailed to you.

You have three choices regarding ownership when the college/university will be funding the development of it:

- (1.) College/University owns it,
- (2.) College/University and faculty member(s) jointly own it, or
- (3.) Faculty member owns it and Grants College/University license to use it for three years.

Which ownership choice should be used depends on the facts of each situation. An important fact to remember is the college or university should retain some type of right to use the course pack for three years from date of first use if contributing to its creation. If a faculty member becomes incapacitated, unavailable or is unable to teach the course for any reason, the college or university can still use the course pack.

Example A: When the E-textbook will consist mostly or entirely of "new" materials and the faculty member will be paid additional compensation above their normal salary or granted release credits, choice # 1 or #2 are preferred.

Example B: When the E-textbook will consist mostly or entirely of copyrighted materials currently owned by the faculty member and the faculty member will be paid additional compensation above their normal salary or granted release credits, choice #2 or #3 are appropriate.

Example C: For other situations that are a combination of variables that fall in between examples A and B, then Choice #2 - joint ownership may be appropriate.

Example D: If a faculty member creates an E-Textbook without entering into a written agreement and without receiving additional compensation above their normal salary or release credits, or does not substantially use the resources of the college/university above their normal support level, the faculty member typically owns the E-Textbook. The college/university has no right to use it, so none of the three choices above apply. If use of the E-Textbook is desired for future years, a license should be acquired from the faculty member, which then would be choice #3.