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COPYRIGHT AND ATTRIBUTION GUIDE



Air Force Institute of Technology

Version 1.0

22 March 2022

INTRODUCTION: OVERVIEW AND PURPOSE

The purpose of this document is to establish a guide on the use of copyrighted material, the attribution of source material, copyright protection of covered works (limited applicability only for civilian faculty), and to educate AFIT personnel on important aspects of copyright law. This guide is intended for all AFIT employees, including all AFIT faculty, staff, contractors, and students, as well as all students reporting to AFIT regardless of the school they are attending.

The use of examples is intended to illustrate and clarify particular concepts that may occur in day-to-day operations.

SECTION 1: COPYRIGHT USE, ATTRIBUTION, AND DOCUMENTATION

1.1. **Copyrights.** Consistent with AFI 51-303 (*Intellectual Property*), paragraph 6.1, AFIT recognizes the rights of copyright owners worldwide, and uses and acquires rights consistent with applicable laws and regulations. AFIT personnel desiring to use a potentially copyrighted work, whether by reproducing (including downloading), distributing, performing, making derivative works of, or doing any other act that would infringe a copyright owner's rights, should initially assess whether the work is protected by copyright. If so, AFIT personnel should perform one or more of the following:

- (a) ensure the proposed use is specifically covered by an authorized use as described in Section 3 (face-to-face teaching activities or online teaching activities covered by the TEACH Act); or
- (b) obtain permission from the copyright owner(s) for the proposed use; or
- (c) obtain a license, or utilize an existing license, from the copyright owner(s) for the proposed use; or
- (d) obtain a legal opinion from AFIT/JA that the work may be used as proposed without permission or a license (e.g., the proposed use constitutes a *fair use* as described in Section 2.6).

Note: This analysis applies to each proposed use of each copyrighted work. For example, the downloading of a video may require a *fair use* opinion, while the playing of the same video in class may be authorized as described in Paragraph 3.1 (face-to-face teaching exception).

1.2. **Attribution.** In all cases, an employee using a work of another should acknowledge the owner or source of the work (AFI 51-303, 6.2.1). This rule applies to all works, whether or not protected by copyright. At minimum, the acknowledgment will be accessible and include the name of the owner and source of the work. When attributing work, follow an appropriate writing standard, such as the Air Force Tongue and Quill, Chicago Manual of Style, etc.

1.3. **Documentation.** When using a work normally subject to copyright (even if there is no copyright or existence of an in force copyright cannot be confirmed), the employee is responsible for documenting the appropriate use of that work (e.g., by retaining a copy of the permission or legal opinion or by annotating the source and license for the work) and ensuring their use of the work does not exceed the authorized use. All AFIT employees should maintain sufficient documentation to demonstrate compliance with paragraphs 1.1 and 1.2. There is no specific format required; however, documentation

received pursuant to paragraph 1.1 (b) and (c) above, must be shared with and maintained by AFIT/JA. Procedures for obtaining copyright compliance with paragraph 1.1 are detailed in Section 5.

1.4. **Guests and Contractors.** AFIT employees/faculty should inform their guest lecturers and supporting contractors of Air Force policies on respecting copyrights.

EXAMPLES

Example 1.1: Each and Every Use of a Copyrighted Work Must be Lawful

Professor Jones wants to show a video to her class. Trying to be careful to comply with copyright law, she purchases the video online and, after lawfully downloading the video, she specifically ensures that it is licensed for one-time public performance. She copies the file onto the “shared drive” so that she can access it from the computer in each classroom. **This would be a violation of copyright law, as others would be able to access it and copy it without authority (due to copying file to a shared drive).**

Professor Jones also bought a book with an excellent graph she wanted to show to her class. She scanned the page with the graph and handed out printed copies to her students. Copying the graph by making a scanned image is not ordinarily a licensed use and constitutes copyright infringement. Making multiple copies for each of her students is also copyright infringement.

Example 1.2: Citing a Work Licensed under Creative Commons

Professor Crangis McBasketball searches Creative Commons for an image of a graduation ceremony to use and finds one that is licensed for such use. **The professor must document the source of the image and the specific type of Creative Commons license authorizing the use of the work.** In the article, the professor may include the following caption below the image: “*Graduation Day*” by John Smith, licensed under CC BY 4.0. For more information on Creative Commons licenses, see <https://creativecommons.org/licenses/>.

Example 1.3: Using an Article with Permission from the Author

Professor Melvin Flump receives permission from an author of an article to reproduce the article and to distribute a hard copy to each student. The professor includes the following attribution at the bottom of the first page of the article: “*Copyright John Smith 2006. Used with permission.*” **The professor must avoid using the article beyond the scope of the permission obtained, such as by posting the article on a website.** Note: Professor Flump must, in this case, ensure the author still has the authority to give permission to use the article. In some cases, an author may have assigned their entire copyright to the publisher and no longer have authority to grant permission to others. The professor has permission to use the article; it was granted by the author. However, the student cannot reproduce the article, they would need to request and obtain their own permission from the author.

Example 1.4: Obtaining Permission May Require Multiple Requests

Professor McFly-Wright wants to create a video showing various aircraft, as they are flying through the sky, from videos taken by the Air Force. He also synchronizes a popular song to the video such that the music matches the motion of the aircraft. The videos are free of copyright as Government Works, but the professor realizes he must obtain permission for the music. **Typically, permission must be obtained for both the performance rights of the vocalist as well as the composition rights of the underlying music, which are frequently owned by different entities. Professor McFly-Wright should also obtain a “sync license,” which grants specific permission to play the music with that specific video.** Some musicians would not want their music associated with “weapons of war” even if they would otherwise be willing to grant permission to play their music.

Example 1.5: Using and Citing a Work of the United States Government

A professor downloads a photograph of an F-15 from an official Air Force website (e.g., <https://www.af.mil/News/Photos.aspx>). The photograph was taken by a member of the Air Force Public Affairs. Because the photograph was taken as part of the photographer’s official government duties, there is no copyright in the U.S. (see Section 4). The professor may print a copy of the website where the photograph was taken or annotate the URL and the date the photograph was downloaded. When using the image, the professor may include the following statement below the image: *Official Air Force Photo*. Alternatively, the professor could include a small number adjacent to the photo and document the source of the image elsewhere.

SECTION 2: BASICS OF COPYRIGHT

2.1. **Subject Matter of Copyright.** Copyright protection exists in original works of authorship, whether published or unpublished, when fixed in any tangible medium of expression. The work may be perceived directly or only with the aid of a machine or device. *Original* means that the author independently created the work that possesses at least some minimal degree of creativity. Novelty is not required.

2.1.1. Copyright protects the expression of facts, ideas, or concepts and does not extend to the facts, idea, or concept themselves. For example, facts are not protected by copyright, but the expression of those facts (whether in writing, table, or chart, for example) may be protected by copyright.

2.1.2. The following are examples of other material not subject to or having little copyright protection: words and short phrases such as names, titles, and slogans (e.g., “Where’s the beef?” or “Got milk?”); blank forms, such as time cards, graph paper, account books, diaries, bank checks, scorecards, address books, report forms, order forms and the like, which are designed for recording information and do not in themselves convey useful information; and works consisting entirely of information that is common property containing no minimal degree of creativity, such as, for example, standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events or classes, and lists or tables taken from public documents or other common sources.

2.1.3. Works of authorship subject to copyright include literary works (works expressed in books, computer programs, documentation, e-mail messages, discussion group postings, website content); musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works (works expressed in multimedia presentations and equipment); sound recordings, and architectural works.

2.1.4. The requirement that a work be “fixed in any tangible medium of expression” means the work is embodied in a copy or sufficiently permanent or stable form that can be perceived, reproduced, or otherwise communicated (e.g., paper, canvas, film, audio tape, video tape, floppy disk, hard disk, CD, DVD, etc.). Copyright protection does not extend to works of sounds, images, or both that are transitory duration, such as unrecorded speeches (compare audio recording versus written record), unrecorded musical performances, or unrecorded dances.

2.2. **Duration of Copyright.** Copyright protection in works created after 1978 generally endures for the life of the author plus 70 years. The copyright of a joint work (prepared by two or more authors) endures for a term consisting of the life of the last surviving author plus 70 years. If the author is anonymous, cannot be identified, or is an employer where the work was created by an employee under the Work for Hire doctrine, the duration of the copyright is 95 years from first publication or 120 years from its creation, whichever expires first. All copyrights run to the end of the calendar year in which they expire.

2.2.1. The copyright term for works created before 1 January 1978 can be a complicated determination. A good source on the term of copyright is: <https://copyright.cornell.edu/publicdomain>. Consult AFIT/JA for further assistance.

2.2.2. For example, as of 2020, the copyright in all works published before 1925 have expired, after having run the maximum term of 95 years. However, a derivative work of these expired works (e.g., a recent translation) may still be subject to copyright.

2.3. **Rights of Copyright Owner.** The owner of a copyright has the exclusive right to do, and to authorize others to do, the following:

2.3.1. To reproduce the copyrighted work in copies or phonorecords;

2.3.2. To prepare derivative works based upon the copyrighted work;

2.3.3. To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

2.3.4. To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, motion pictures and other audiovisual works;

2.3.5. To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and

2.3.6. To perform the work publicly, in the case of sound recordings, by means of a digital audio transmission.

2.4. **Copyright Notice.** Copies of published, copyrighted works should bear a copyright notice. A proper notice has three elements: the word, *Copyright*, or the letter *C* in a circle, ©, (or *P* in a circle for copies of a sound recording, ®); the year of creation or first publication; and the owner of the copyright. A notice is not required on the original work of authorship to have copyrights.

2.5. **Copyright Infringement.** Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner. Copyright infringement requires the proof of two elements: (1) ownership of a valid copyright; and (2) actionable copying of constituent elements of the work that are original.

2.5.1. Copyright infringement generally does not require verbatim copying, but rather a degree of similarity between the allegedly infringing work and the copyrighted work. The degree of similarity depends, in part, on a degree of access the infringer had to the copyrighted work.

2.5.2. The United States Government has no general exemption from liability for copyright infringement. However, some remedies are not available to a copyright owner against the Government.

2.5.3. There are limited instances in which use of a copyrighted work (such as copying) is not an infringement. Some of the instances are described in Section 3 (e.g., certain reproductions for libraries and archives, and certain activities by the purchaser of a copyrighted work under the *first-sale doctrine*). Perhaps the most well-known limitation on copyright exclusive rights for AFIT employees is *fair use*.

2.6. **Fair Use.** The *fair use* of a copyrighted work is not copyright infringement. The use of a copyrighted work may qualify as fair use if done for purposes such as criticism, comment, news

reporting, teaching (including multiple copies for classroom use), scholarship, or research. The determination of whether a particular use qualifies as a fair use requires evaluation of four factors:

1. The purpose and character of the use –whether the use is commercial or noncommercial (nonprofit educational) nature.

2. The nature of the copyrighted work – whether the work is highly creative/consumable or factual in nature. In evaluating this factor, highly creative/consumable works, such as a movie or musical work, are afforded greater copyright protection and uses thereof are more likely not a fair use; works with little creativity, such as the expression of purely factual material in a table, are afforded less copyright protection and uses thereof are more likely a fair use.

3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. This factor applies qualitatively as well as quantitatively – that is, copying a relatively small section of a long article may not be a fair use if the portion copied is particularly important to, or considered to be the essence of, the article.

4. The effect of the use upon the potential market for, or value of, the copyrighted work. Generally, this factor does not favor the use of educational materials in an educational setting as the market value of the materials is specifically for teaching purposes. Other factors to take into consideration include the number of copies made, whether licensing options were available, access to the copies (public versus restricted), and whether the use will be spontaneous/once versus planned/repeating.

No single one of these four factors is dispositive. The fair use analysis applies to both published and unpublished works. Each fair use analysis is unique to a specific set of facts and circumstances, and employees should take care not to assume a fair use analysis that was favorable in one case would necessarily apply to other similar uses of the copyrighted work. It is important to obtain a legal opinion from AFIT/JA that the proposed use constitutes as *fair use*. Contact AFIT/JA at afitja@afit.edu.

EXAMPLE

Example 2.1: Facts are Not Protected by Copyright

Professor Mettle is interested in the melting temperature of certain metals, which are listed in a journal article. The journal article, which is copyrighted, includes a table listing various metals and their melting temperatures. The specific melting temperature of each metal is a fact and thus not subject to copyright protection; however, the expression of those facts, as displayed in the table, may be protected by copyright. Professor Mettle could avoid potential copyright infringement if he merely uses the melting temperatures of the metals instead of copying the table displaying the various metals and their melting temperatures.

SECTION 3: AUTHORIZED USE OF COPYRIGHTED WORKS

The following uses of copyrighted works by AFIT employees are not considered to be copyright infringement and are authorized:

3.1. **Face-to-Face Teaching Activities under 17 USC § 110(1).** An instructor or pupil is authorized to perform or display a copyrighted work in the course of face-to-face teaching activities where the performance or display occurs in a classroom or similar place devoted to instruction (e.g., auditorium) and unless, in the case of a motion picture or other audiovisual work, the copy of to be performed or displayed was not lawfully made (or the person knew or had reason to believe the copy was not reasonably made).

Note: This authority, when properly used, authorizes the performance of the entire motion picture or other audiovisual work.

EXAMPLE

Example 3.1: Utilizing the Face-to-Face Teaching Exception

Professor Schmidt downloads a copyrighted image from the internet and displays it in a live class to her students to help illustrate a teaching point. This face-to-face limitation on exclusive rights would potentially permit the display of the image in the classroom but would not cover the initial reproduction (download) of the image. If the initial downloading of the image was not lawfully obtained, this authority would not cover the subsequent display of the image in the classroom. However, if Professor Schmidt lawfully downloaded the image, such as by obtaining a legal opinion that downloading the image constitutes a fair use, for example, then the professor may subsequently display the image in her class.

3.2. **Teaching Activities by Digital Transmission under 17 USC § 110(2) (TEACH Act).** For works that are produced or marketed primarily for performance or display as part of mediated instructional activities (via digital network, copy, or audio recording), performance of a nondramatic literary work or reasonable and limited portions of any other work, or the display of a work in an amount comparable to that which is typically displayed in a live classroom session, may be transmitted digitally in the course of electronic teaching, where all of the following conditions are met:

3.2.1. The performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities*;

3.2.2. The performance or display is directly related and of material assistance to the teaching content of the transmission;

3.2.3. The transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to: (1) students officially enrolled in the course for which the transmission is made; or (2) officers or employees of the government as part of their official duties or employment;

3.2.4. The transmitting body institutes policies regarding copyright and provides the information to its employees and, with respect to digital transmission, applies technological measures that reasonably prevent: (1) retention of the work in accessible form by recipients of the transmission for longer than the class session; and (2) unauthorized further dissemination of the work in accessible form by the recipients to others; and

3.2.5. The transmitting body does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination.

* The phrase *mediated instructional activities* is intended to require the performance or display to be analogous to the type of performance or display that would take place in a live classroom setting.

SECTION 4: WORKS OF THE UNITED STATES GOVERNMENT

4.0. Government Employee Works. Generally, and in accordance with 17 USC § 105, no copyright is available for any in the United States for a work of the United States Government (copyright may exist in a work of the United States Government in certain foreign countries). However, as of December 2019, § 105 was amended to provide a narrow exception to this general prohibition

4.1. Work of the United States Government. Except as set forth in paragraph 4.2 below, A *Work of the United States Government* is defined as “a work prepared by an officer or employee of the United States Government as part of that person’s official duties.” This definition applies equally to published and unpublished works. An employee, for purposes here, includes both military members and civilian employees (unless the employee is a civilian member of the faculty of a covered institution). Official duties may be express or implied and include works self-assigned by the employee while exercising their official duties. See, e.g., *Herbert v. United States*, 36 Fed. Cl. 299 (1996) (“the specific task need not be individually assigned in order to qualify as part of the official functions of a government employee.”). Contractor employees are not considered to be employees of the Government for determining whether a work is not subject to copyright under 17 USC § 105.

4.1.1. A Work of the United States Government shall not include any notice asserting copyright protection in the United States. Normally, a Work of the United States Government is considered to be in the public domain and should include the notice at Figure 4-1. However, a Work of the United States Government, even though not protected by copyright, may be subject to other restrictions (e.g., statutory restrictions on disclosure for protection of national security, export control, controlled unclassified information, Personally Identifiable Information, etc.).

4.1.2. Foreign copyrights in Works of the United States Government are owned by the Government. However, in appropriate circumstances, and only after consultation with AFIT/JA, AFIT may disclaim the foreign rights to copyright protection. In such cases, the phrase, *Foreign copyrights may apply* in Fig 4-1 may be replaced by the phrase, “This work is available for worldwide use pursuant to CC0 1.0 Universal.” See <https://creativecommons.org/publicdomain/zero/1.0/> (in digital works, the Creative Commons license in the notice should be hyperlinked to this URL). See Figure 4-2.

Notice: This is a work of the U.S. Government, as defined by 17 U.S.C. § 101, and is therefore not subject to copyright protection in the United States. Foreign copyrights may apply.

FIGURE 4-1
Copyright Notice for a Work of the United States Government

Notice: This is a work of the U.S. Government, as defined by 17 U.S.C. § 101, and is therefore not subject to copyright protection in the United States. This work is available for worldwide use pursuant to [CC0 1.0 Universal](#).

FIGURE 4-2
Alternate Copyright Notice for a Work of the United States Government

4.1.3. 17 USC § 105 does not prohibit the Government from receiving and holding a privately created work that is protected by copyright that was transferred by assignment, bequest, or otherwise. The mere inclusion of a private work within a Government work does not change the copyright status of the private work.

4.1.4. A Work of the United States Government is not necessarily determined by whether the work was prepared using government material, facilities, or other resources, or the author-employee's own time, material, facilities, or other resources.

4.1.5. AFIT employees may obtain copyright protection in works prepared outside of their official duties even though it may include information or knowledge obtained as part of their official duties or it generally relates to their area of professional expertise.



While an employee may obtain a copyright for a particular work, whether by off-duty activity or as a covered author of a covered work, that employee may be prohibited, by law or regulation, from receiving compensation for that work. Consult with AFIT/JA for guidance. See 18 U.S.C. § 209 and 5 CFR § 2635.807.

4.1.6. A government employee may improve on a government work, or create a derivative work by adding copyrighted or uncopyrighted material. If the improvement or derivative work is prepared outside the employee's official duties, then the employee may own a copyright in the improved/derivative work (excluding the original government work of which there was no copyright). In all such cases, the government employee must indicate which portions of the improved work have been changed from the original work of the United States government.

4.1.6.1. Where the changes are segregable from the original work (e.g., a new section was added to the original article), the notice should indicate the new material that was added.

4.1.6.2. If the revised work is non-segregable, then the original work must be identified as a government work with enough specificity that the reader can locate the original work.

4.1.6.2.1. If the original work was published or made publicly available, the notice should provide a citation that enables an individual to locate the original work from the published source. See Figure 4-3 for a sample notice.

4.1.6.2.2. If the original work was not published or made publicly available, the notice should provide enough detail to enable an individual to directly contact the appropriate government organization to request access to the work or to request it under a Freedom of Information Act (FOIA) request.

Notice: This work is a revision of, or otherwise derived from, the following Work of the United States Government, as defined at 17 USC § 101: “History of American Aviation,” Journal of American Aviation History, Volume 27, Number 3, pps. 114-178 (1998).

FIGURE 4-3

Sample Copyright Notice for a Copyrighted Work Containing a Work of the United States Government

Example 4.1: AFIT Thesis Is a Work of the United States Government

An AFIT student prepares a thesis to complete his requirements for his degree. The thesis was completed as part of his official duties as a government employee. Accordingly, there is no copyright protection in the United States. A few months later, he notices that his thesis is offered for sale on Amazon.com. The publisher may freely publish the thesis and sell it within the United States without permission of the student, AFIT, or the U.S. Government.

Example 4.2: Employee May Copyright Personal Work Relating to Professional Duties

An AFIT professor writes a humorous book on the teaching profession, including real-world examples of interactions with students as well as examples of fighting through “bureaucratic red tape.” The professor writes the book at home during his free time. Although the book relates to his profession and he would never have been able to write it without his experiences at AFIT, the professor could own the copyright interest in the book.

Example 4.3: Self-Assigned, Voluntary Tasks May be Considered Part of Official Duties

An AFIT professor decides there are no good textbooks for his class, so he decides to write his own. Even though he was never directed to, nor required to do so, this self-assigned work was prepared as part of his official duties, is thus a work of the United States Government, and is not subject to copyright protection in the United States.

Example 4.4: Personal Copyrighted Derivative of a Work of the U.S. Government

An AFIT employee writes an article that is published in a prestigious journal. The article was written as part of her official duties. Depending on whether the employee was a civilian faculty and the article is a published work, there may or may not be copyright in the work. Presuming the article is a Government Work and therefore not copyrighted: several years later another publisher contacts the employee and, recognizing that there is no copyright protection in the article, asks the employee to update and revise the article for publication in their journal. The employee revises and updates the article on her own time and outside her official duties. The employee may own the copyright in the revised article and assign it to the publisher, if desired. However, the employee must indicate in the publication of the revised article which portions of the improved article are subject to copyright protection. In most cases, where the revisions are non-segregable, this requirement is accomplished by providing notice of the original government work, with sufficient detail such that an individual could obtain the original article and compare it to the revised version to determine which portions of the revised article are subject to copyright protection. The notice at Figure 4-3 should be used in this case.

Example 4.5: No Authority to Restrict Use of a Work of the United States Government

An AFIT employee takes photographs of the AFIT buildings, after obtaining permission from the installation commander, to use in an AFIT publication. The publication is cleared by Public Affairs for public release. The employee is later contacted by a local newspaper reporter, who asks for permission to use the photographs in the newspaper. The employee does not have the authority to deny or approve the use of these photographs as they are considered to be in the public domain. It is therefore inappropriate for the employee to deny or even grant permission for such use. The employee should direct the reporter to the AFIT/JA org email (afitja@afit.edu).

4.2. **Covered Works by a Covered Author.** As noted above, 17 U.S.C. § 105 was amended in December 2019 so that a “covered author” of a “covered work” owns the copyright of the “covered work.”

4.2.1. A covered author is a civilian member of the faculty of a covered institution. Covered institutions, with respect to the Air Force, include the United States Air Force Academy and Air University. At this time, military faculty members are not included in the definition of “covered author.”

4.2.2. A covered work means a literary work produced by the [covered author](#) in the course of employment at the [covered institution](#) for publication by a scholarly press or journal.

4.2.3. The Secretary of Defense may direct the covered author of a covered work to provide the Federal Government with an irrevocable, royalty-free, world-wide, nonexclusive license to reproduce, distribute, perform, or display such covered work for purposes of the United States.

4.3. **Publishing Agreements.** Publishers routinely send a contractual agreement to an author before publishing the written work. AFIT employees should coordinate with AFIT/JA prior to signing any such publishing agreement. Many publishers have a specific form for use where the author is a U.S. Government employee. If the author is a “covered author” of a “covered work,” then the standard form may be appropriate. If authorship is mixed (at least one author is a “covered author” of a “covered

work” and at least one author is not), then different forms may be required for each author. It may therefore be helpful to notify the publisher that the work may be a “Work of the United States Government” and ask if they have a specific publishing agreement to be used for that purpose. The following statements apply to only those authors that are not considered to be a “covered author”:

4.3.1. AFIT employees may not sign a publishing agreement that purports to bind the U.S. Government or any agency or department thereof. The publishing agreement may not, for example, assign any obligations or responsibilities to the U.S. Government, the Air Force, or AFIT.

4.3.2. AFIT employees are prohibited from assigning a copyright interest in a Work of the United States Government.

4.3.3. In general, AFIT employees may sign a publishing agreement for publishing a work where the agreement is limited to asserting that they were a government employee at the time they authored the work and that the work was prepared as part of their official duties.

4.3.4. AFIT employees may, at their discretion, sign a publishing agreement with additional personal assertions, where appropriate, such as asserting that the work was original or not copied from another.

4.3.5. AFIT employees may also commit themselves, at their discretion, to appropriate personal obligations, such as notifying the publisher of changes to the work, agreeing to proofread the work, reporting errors when they become known, etc.

SECTION 5: PROCEDURES FOR ENSURING PROPER USE OF COPYRIGHTED WORKS

5.1. **Preference for Avoiding Copyrighted Works.** All things being equal, AFIT employees should use works not protected by copyright or works where the proposed use has been licensed or where permission has been previously provided, rather than use a work subject to copyright protection. Employees are encouraged to first look for works at sites where the material is not subject to copyright or where permission to use the works has been granted by the owner, such as one of the resources in Appendix C.

5.2. **Section 3 Exceptions.** If a copyrighted work is necessary or a suitable alternative cannot be found, employees should determine whether one of the limitations in Section 3 apply. The limitations under Section 3 are not considered to be copyright infringement nor a “fair use” of the work. These limitations are specifically authorized uses of a copyrighted work.

5.2.1. AFIT personnel are authorized to assess for themselves whether one of the limitations in Section 3 applies to their desired use of a copyrighted work as long as they document their use of the work, including at minimum:

1. The source of the copyrighted work. If obtained from a website, document the URL and preferably a description of the site. If obtained from a book or journal, list the full citation (e.g., page and name of book and publisher).
2. The name or identity of the author or, if not owned by the author, the owner of the copyrighted work;
3. The year(s) of the copyright; and
4. The applicable exception relied upon (i.e., the Face-to-Face Teaching exception or the TEACH Act).

5.2.2. AFIT employees must ensure they meet all of the applicable requirements listed in Section 3 when relying on one of these limitations. AFIT employees should consult with their supervisor or with AFIT/JA for questions on the applicability of Section 3 limitations.

5.3. **Obtaining Permission or License from Copyright Owner(s).** Obtaining permission or license for the proposed use(s) of a copyrighted work can be a complex process. An employee asking for permission must first ensure all proposed uses of the work are accounted for in the request. In addition, a single copyrighted work may have multiple copyright interests and different owners.

5.3.1. The following information should be included in a request for permission or license:

5.3.1.1. Description of the copyrighted work. This includes the title of the work (or broader work in which the copyrighted work is located); name of the author and owner of the copyright (if different from the author); source of the work (if different from the title), including, where applicable, version number or edition, page number, figure number, etc.; and the complete copyright notice attached to the work, if any. If only a portion of the copyrighted work will be used, the portion used should be adequately described.

5.3.1.2. Statement of intended use. Describe all intended use(s) of the copyrighted work, including, where appropriate, the number of copies that will be made; a description of who the work will be distributed to and how many people (e.g., approximately 30-35 students), if any; type of reproduction (e.g., photocopy, scanned, copied onto disk, etc.); whether material will be sold or whether there is any charge for access to the material; and the length of time the material will be displayed or performed, etc.

5.3.1.3. Modifications. A description of any contemplated modifications, if any.

5.3.2. Guidelines for requesting permission or license. All requests for permission or license to use a copyrighted work must comply with paragraph 6.4, AFI 51-303. A sample request is included in Attachment 2, AFI 51-303.

5.3.2.1. A request should ask for the minimum rights necessary.

5.3.2.2. The request should make it easy for the copyright owner to affirmatively grant permission or license (e.g., by including a draft document the owner merely needs to sign). If request is sent in hardcopy, a duplicate should be included so the recipient may retain one copy and return the other granting permission.

5.3.2.3. The request shall indicate that the copyright owner may designate the copyright notice and credit line to be used.

5.3.2.4. Unless the requestor knows that permission will not be granted free of charge, the initial request should ask for a royalty free permission or license.

5.3.2.5. Where practical, a copyright request will be sought on an institute-wide basis (not for a single faculty member, course, or school).

5.3.2.6. All such requests must be coordinated with AFIT/JA prior to being sent to the copyright owner(s). To initiate coordination contact AFIT/JA at afitja@afit.edu. AFIT/JA will maintain a copy of all copyright permissions granted. AFIT/JA maintains copyright related information on the AFIT Intranet website at:

https://eim.afit.edu/sites/chancellorcorner/JA/_layouts/15/start.aspx#/

5.4. **Obtaining a Fair Use Opinion.** When requesting a fair use opinion, the requestor must supply sufficient information to enable the attorney at AFIT/JA to appropriately conduct the fair use analysis summarized in paragraph 2.6. In general, the request should include all of the information in paragraph 5.3.1.

APPENDIX A: GLOSSARY

Many definitions are provided under 17 U.S.C. § 101

Author. An “author” under U.S. Copyright Law is the creator of an original expression (unless there is a written agreement to assign, such as in terms of employment). For works-made-for hire, the employer or commissioning party is considered to be the author.

Collective Work. A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

Compilation. A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

Copy. A “copy” is a material object, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a [machine](#) or device. The term “[copies](#)” includes the material object, other than a phonorecord, in which the work is first fixed.

Copyrights. Rights granted by the Federal Government to authors of original works of authorship that permit the author to have the exclusive rights to, and to authorize any others to, (1) reproduce the copyrighted work in copies or phonorecords; (2) prepare derivative works based on the copyright work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures, and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

Covered Author. A “covered author” is a civilian member of faculty of a covered institution. Covered authors own the copyright to covered works, which is an exception to work of the United States Government under 17 U.S.C. § 105.

Covered Institution. A “covered institution” is a DoD institution listed in 17 U.S.C. § 105(c)(2).

Covered Work. A “covered work” is a literary work produced by a covered author in the course of employment at a covered institution for publication by a scholarly press or journal.

Created. A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

Derivative Work. A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound

recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work.”

Display. To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

Face-to-Face Teaching Exception. A limitation to the exclusive rights of a copyright owner for nonprofit educational institutions (such as AFIT) to allows instructors or pupils to perform or display a copyrighted work in a live classroom. See paragraph 3.1 and 17 USC § 110(1). Note: this exception does not apply to broadcast or distance learning.

Fair Use. The “fair use” is a limitation to the exclusive rights of the copyright owner. The determination of whether a particular use of a copyrighted work constitutes “fair use” is a heavily fact dependent and multi-factored decision-making process. AFIT employees may not rely on a claim of “fair use” for what would otherwise be copyright infringement without consulting with AFIT/JA. See 17 USC § 107.

First-Sale Doctrine. The “first-sale doctrine” holds that when a copyright owner consents to the sale of particular copies of his work, he may not thereafter exercise the distribution right with respect to those copies. See 17 USC § 109(a).

Fixed. A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work is “fixed” if a fixation of the work is being made simultaneously with its transmission.

Joint Work. A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. The authors of a “joint work” are co-owners of the copyright in the work, unless there is an agreement to the contrary. 17 USC § 201(a).

Literary Work. “Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects (e.g., books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards) in which they are embodied. Examples of literary works include textbooks, novels, short stories, poetry, plays, movie scripts, letters, email messages, blogs, computer programs, databases, cooking recipes, and mathematical proofs. See

Motion Picture. A “motion picture” is an audiovisual work consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Nondramatic Literary Work. A “nondramatic literary work” is a type of “literary work” that explains, describes, or narrates a particular subject, theme, or idea through the use of narrative, descriptive, or explanatory text, rather than dialog or dramatic action. Generally, nondramatic literary works are intended to be read; they are not intended to be performed before an audience. Examples of nondramatic literary works include, for example: fiction, nonfiction, poetry, directories, catalogs,

textbooks, reference works, advertising copies, compilations of information, computer programs, and databases. See U.S. Copyright Office, Compendium of U.S. Copyright Office Practices (2017).

Original. “Original” means that the author independently created the work that possesses at least some minimal degree of creativity

Perform. To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

Phonorecord. A “phonorecord” is a material object in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecord” includes the material object in which the sounds are first fixed.

Pictorial, Graphic, and Sculptural Work. “Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans.

Pseudonymous. A “Pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

Publication. “Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means-

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

Sound Recording. A “sound recording” is a work that results from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material object (e.g., disks, tapes, or other phonorecords) in which they are embodied.

TEACH Act. The Technology, Education and Copyright Harmonization (“TEACH”) Act is a law that amended sections 110(2) and 112 of the Copyright Act to allow the same activities to take place using

digital delivery mechanisms that were permitted under the policy balance that was struck by Congress when the law was enacted in 1976, while introducing safeguards to minimize the additional risks to copyright owners that are inherent in exploiting works in a digital format. See paragraph 3.2 and 17 USC § 110(2).

Transmit. To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

Work of the United States Government. A “work of the United States Government” is a work prepared by an officer or employee of the United States Government, which is not otherwise considered to be a covered author, as part of that person’s official duties.

APPENDIX B: COPYRIGHT REFERENCES

I. Law, Regulation, International Treaty, and Policy

- 17 USC §§ 101 et seq., *Copyright Law*
- 18 USC § 209, *Supplementation of Federal Salary Prohibited*
- 18 USC § 506, *Seals of Departments or Agencies*
- 28 USC § 1498, *Patent and Copyright Cases*
- *Berne Convention for the Protection of Literary and Artistic Works* (amended 28 September 1979)
- 5 CFR § 2635.807, *Teaching, Speaking and Writing*
- DoDD 5535.4, *Copyrighted Sound and Video Recordings* (16 November 1994)
- AFI 51-303, *Intellectual Property* (22 June 2018)
- SECNAV Instruction 5870.4A, *Copyright* (16 August 2005)
- SECNAV Instruction 5870.8, *Copyright in Works of Authorship Prepared by Department of the Navy Personnel* (14 June 2019)

II. Copyright Publications and Guidance

- “Frequently Asked Questions about Copyright,” CENDI 2008-1 (December 2017)
- “Frequently Asked Questions about Copyright and Computer Software: Issues Affecting the U.S. Government with Special Emphasis on Open Source Software,” CENDI 2009-1 (1 October 2010)
- “Permissions—Government-Prepared and Non-Federal Authored Works: Best Practices for U.S. Government Agencies: Part 1,” CENDI 2014-2 (Fall 2014)
- Compendium of U.S. Copyright Office Practices (3d ed. 2017)

III. Websites with General Information on Copyrights

- United States Copyright Office: <https://www.copyright.gov/>
- Naval Postgraduate School, Dudley Knox Library: <https://libguides.nps.edu/copyright>
- Cornell University Library: <https://copyright.cornell.edu/>
- Stanford University Libraries: <http://fairuse.stanford.edu/>
- Yale University: <https://guides.library.yale.edu/copyright-guidance/copyright-basics>
- Washington State University: <https://printing.wsu.edu/copyright/>
- AFMCLO/JAZ (Patent Law): <https://www.my.af.mil/gcss-af/USAF/ep/globalTab.do?channelPageId=s2D8EB9D62BA52088012BBF45B05805CC>
- AFIT/JA: <https://eim.afil.edu/sites/chancellorcorner/JA/layouts/15/start.aspx#/>

IV. Websites with Information on Licensing Copyrighted Material

- Motion Picture Licensing Corporation (MPLC): <https://www.mplc.org/>
- Copyright Clearance Center: <http://www.copyright.com/>
- ASCAP: <https://www.ascap.com/>
- BMI: <https://www.bmi.com/>
- SESAC: <https://www.sesac.com/>

APPENDIX C:

RESOURCES FOR OBTAINING MATERIAL WITHOUT VIOLATING COPYRIGHT

When using material from any website, it is important to determine what restrictions, if any, apply. Some material is only licensed for limited purposes (e.g., a photo may be used freely but not modified).

Government / Military Collections

- **Department of Defense Photo Gallery:** <https://www.defense.gov/observe/photo-gallery/>
- **Air Force Photos:** <https://www.af.mil/News/Photos.aspx>
- **Library of Congress Catalog:** <https://cocatalog.loc.gov>
- **Federal Depository Library Program:** <https://www.fdlp.gov/>
- **Homeland Security Digital Library:** <https://www.hsdl.org/c/>

Other Collections

- **Burst:** <https://burst.shopify.com/>
Free stock photos for websites and commercial use
- **Clipstill:** <http://www.clipstill.com/>
Mesmerizing free cinemographs for your marketing & website
- **Creative Commons:** <https://search.creativecommons.org/>
Creative Commons is a nonprofit organization dedicated to building a globally-accessible public common of knowledge and culture; makes it easier for people to share their creative and academic work, as well as to access and build upon the work of others.
- **Flickr:** <https://www.flickr.com/>
Online photo management and sharing application to help make photos available and enable new ways of organizing photos and video.
- **FreePhotos:** <https://freephotos.cc/>
FreePhotos.cc is a free resource where you can find creative commons photos for your website or print projects. FreePhotos.cc uses the APIs from a few stock photo providers and gathers images in one place for easy preview and download.
- **Freepik:** <https://www.freepik.com/>
Offers high quality content: illustrations, photos, icons, mockups, and presentations templates.
- **Freesound:** <https://freesound.org/>
Collaborative database of creative-commons licensed sound for musicians and sound lovers
- **Getty Images (Free):** <https://www.gettyimages.com/photos/free>
Stock photos and images.

- **Life of Pix:** <https://www.lifeofpix.com/>
Free high-resolution Photography
- **New Old Stock:** <https://nos.twinsnd.co/>
Vintage photos from the public archives
- **Pexels:** <https://www.pexels.com/>
Free Stock Photos
- **Photodropper:** <https://www.photodropper.com>
WordPress plugin that makes finding and using royalty-free photos easy.
- **SCX:** <https://www.scx.hu/>
Free Stock Photos
- **SoundBible:** <http://soundbible.com/>
Free sound effects
- **Stock Footage 4 Free:** <https://www.stockfootageforfree.com/>
High quality 4K clips
- **StockSnap:** <https://stocksnap.io/>
Free stock photos
- **Unsplash:** <https://unsplash.com/>
The internet's source of freely useable images
- **Videezy:** <https://www.videezy.com/>
Free HD stock video footage
- **Videvo:** <https://www.videvo.net/>
Free HD Stock footage and 4K videos
- **Wikimedia Commons:** https://commons.wikimedia.org/wiki/Main_Page
An online repository of free-use images, sounds, other media, and JSON files

APPENDIX D: CITATION AND STYLE RESOURCES

1. Citing a Style Guide
 - a. *Microsoft Manual of Style for Technical Publications*. 3rd ed. Redmond, WA: Microsoft Press, 2004.
 - b. *Chicago Manual of Style*. 17th ed. Chicago, Illinois: University of Chicago Press, 2017.
2. Citing an AFI
 - a. AFMAN 33-326, 25 November 2011, *Preparing Official Communications*.