The following information is presented to faculty members and course developers so that they may better recognize copyright issues and avoid violating copyright law, which could result in legal liability to themselves and to the university.

1. Introduction to Copyright
   a. Copyright Law
   b. Protected Works
   c. Unprotected Works
   d. Rights of Copyright Owner
   e. How Copyright Protection is Obtained

2. Avoiding Infringement
   a. Obtaining Permission
   b. Fair Use Exception
   c. TEACH Act

3. Special Internet Issues: Copying & Linking
   a. Copying Text & Images
   b. Linking to Other Web Sites
   c. Guidelines for Linking

4. Resources & References

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**Caution!** Copyright is an extremely complex and evolving area of law. The information presented below is intended only as a general introduction to this topic and does not constitute legal advice. Specific questions concerning copyright law should be directed to the university’s system librarian, who will consult with the office of the general counsel.

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1. Introduction to Copyright
   a. Copyright Law

   Federal copyright law is based upon the Patent and Copyright Clause of the United States Constitution, which grants to Congress the power “to promote the progress of science and useful arts, be securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.”

   Acting upon this authority, Congress passed the Copyright Act, which protects “original works of authorship fixed in any tangible medium of expression.”

   b. Protected Works

   Both *published* and *unpublished* works are protected by current copyright law. Copyright protection begins when the work is created, even without the familiar copyright registration and notices, such as “Copyright © National American University 2012.”
Under the Copyright Act of 1976, copyright protections extend to:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works.

These categories should be viewed broadly. For example, computer programs and most compilations are protected as “literary works;” maps and architectural plans are protected as “pictorial, graphic, and sculptural works.”

Copyright protection does not last forever. The time period during which a work is copyrighted depends upon the date the work was created or published. When U.S. Works Pass Into The Public Domain, prepared by Lolly Gasaway of the University of North Carolina, lists the different periods of copyright protection: [http://www.unc.edu/~unclng/public-d.htm](http://www.unc.edu/~unclng/public-d.htm)

c. Unprotected Works

Copyright protections do not extend "to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 4

The following works are generally not protected by copyright law and may be reproduced without restriction:

- Works in the public domain (generally limited to works created before 1923);
- Most works created by the U.S. federal government;
- Works that lack sufficient creativity or originality for copyright protection; and
- Facts and ideas (ideas can be extremely creative but they still aren’t copyrightable).

No permission is required to use these types of works, but your use is permissible only if the entire work falls into one or more of these categories. For example, a sound recording of a Beethoven sonata is protected by copyright even though the underlying work is in the public domain. Similarly, a compilation or specific organization of facts may be protected even though the underlying facts are not themselves protected.

d. Rights of Copyright Owner

Generally, a copyright owner possesses "the exclusive rights to do and to authorize any of the following:" 5

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
• To **distribute copies** or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

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

• 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

• In the case of sound recordings, to **perform the work publicly** by means of a digital audio transmission.

Exercising any of the exclusive rights (reproduction, display, performance, etc.) without permission from the copyright owner generally constitutes copyright infringement, unless the use is allowed under fair use or another defense.

A person who infringes on a copyright may be liable for:

• The copyright owner's actual damages and any additional profits of the infringer

  - or -

• Statutory damages

  o Instead of actual damages, a copyright holder may elect to recover statutory damages in a sum not less than $750, nor more than $30,000.

  o Statutory damages may be increased to a sum not more than $150,000, if the court finds that the infringement was committed willfully.

  o The court may reduce statutory damages to a sum not less than $200, if it determines that the infringer was not aware and had no reason to believe that the infringer was violating a copyright.⁶

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**e. How Copyrights Protection is Obtained**

The way in which copyright protection is secured is frequently misunderstood. No publication or registration or other action in the Copyright Office is required to secure copyright. Copyright is secured **automatically** when the work is created. A work is “created” when it is fixed in a tangible form of expression, such as in a book, manuscript, sheet music, film, videotape, microfilm, cassette tapes, CDs, or LPs.

**2. Avoiding Infringement**

If you wish to reproduce, distribute, display or publicly perform a copyright-protected work, you must first have the right to do so. There are only two ways to establish that you are permitted to use a copyright-protected work:

• You have obtained permission from the copyright owner; or

• Your use is “fair use” as defined in the Copyright Act.
The safest course of action is to obtain permission from the copyright owner. Permission may be obtained directly from the owner or through collective rights organizations, such as the Copyright Clearance Center (for text materials), BMI and ASCAP (for music rights), various theatrical agencies for performance rights for dramatic works, etc.

a. Obtaining Permission

Copyrighted material may always be copied with the permission of the copyright holder. Generally, a request for permission to use copyrighted material should clearly describe:

- The intended audience
- The work you want to use
- When and how long you will use the work
- Why you want to use the work
- How and where you want to use the work
- Agree to the owner’s limitations

b. Fair Use Exception

Although an original work may be protected by copyright, it is not an infringement to reproduce such work without the author's permission under the “fair use” exception, if such reproduction is for purposes such as:

- Criticism
- Comment
- News reporting
- Teaching
- Scholarship
- Research

The following factors are considered when determining whether the fair use exception applies in a particular case:

- The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market for or value of the copyrighted work.

Because National American University is not a nonprofit educational institution, fair use should rarely be relied upon as a basis for using copyright-protected materials.

c. The TEACH Act

In 2002, Congress amended the Copyright Act of 1976 when it passed the Technology, Education and Copyright Harmonization Act (TEACH Act), which applies to the performance or display of copyrighted works in a digital distance education setting. However, the expanded
provisions listed in the TEACH Act only pertain to accredited nonprofit educational institutions and governmental bodies and do not apply to NAU.\textsuperscript{11}

3. Special Issues on the Internet: Copying & Linking
   a. Copying Text & Images
   In general, text and images available on the Internet are subject to the copyright protections discussed above. Publication on the Internet does not place a work in the “public domain.”
   
   b. Linking to Other Web Sites
   Simply linking to other web sites is permissible. Note, however, that linking to password protected or private subscription sites may violate copyright laws. Also, “deep linking” (linking to a page within the site bypassing the homepage) may be a possible copyright infringement if the copyright holder is not readily identified.
   
   c. Guidelines for Linking
   - When linking to a web site, use as much reference information as possible (e.g., web site title, article name, author, date, URL link).
   - Make sure it is obvious that the linked content is someone else’s work.
   - Given the choice between linking to a page with advertisements and one without (i.e., “printer friendly” pages), choose the one with the advertisements.
   - Do not link into a nested frame page. Link to the entire frame set. If you have to “view source” to get a link, you have gone too far.
   - Do not link to a specific image file. Keep it in the context of the page in which it is displayed.
   - Do not link to a page on a password-protected site to which NAU does not have access. Example: If you have a personal account (and password) to the Wall Street Journal, but NAU does not, then don’t link to that article. Linking to NAU’s paid databases is permissible.
   - Do not link to any site that would force a student to pay for the content.
   - Avoid linking to articles that require some sort of free registration from the student. This may be necessary in some fields and will be evaluated on a case-by-case basis.
   - Given the choice, link to sites that are more reputable. This is similar to your selection of printed content. For example, a peer-reviewed article is better than a non-reviewed article – an article from an organization may be better than one from an individual – and an article from an acknowledged expert is better than one from a layperson.
   - Avoid linking to articles from European news sites/agencies. This may be necessary in some fields and will be evaluated on a case-by-case basis.
   - When in doubt, ask. NAU can contact copyright owners for permission.

When linking to external web sites, NAU will include a blanket disclaimer about the university’s lack of control over content of such sites.
4. **Resources & References**

- United States Copyright Office, [http://www.copyright.gov](http://www.copyright.gov)
- Stanford University Copyright & Fair Use Center, [http://fairuse.stanford.edu/](http://fairuse.stanford.edu/)
- University of Texas Copyright Crash Course, [http://copyright.lib.utexas.edu/](http://copyright.lib.utexas.edu/)
- Cornell University Legal Information, [http://www.law.cornell.edu/topics/copyright.html](http://www.law.cornell.edu/topics/copyright.html)
- Copyright Clearance Center, [http://www.copyright.com/](http://www.copyright.com/)
- Berkeley Digital Library, [http://sunsite.berkeley.edu/Copyright/](http://sunsite.berkeley.edu/Copyright/)

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*Your manuscript is both good and original; but the part that is good is not original,* and the part that is original is not good.

~ Author Unknown

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2. 17 USC § 101, et seq.
3. 17 USC § 102(a)
4. 17 USC § 102(b)
5. 17 USC § 106
6. 17 USC § 504
7. 17 USC § 107
8. Id.
9. Id.
10. 17 USC § 110(2)
11. Id.