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*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19, dated 07/07/2005*

POSTING COPYRIGHTED WORKS ON EPA WEB SITE

1. PURPOSE

This guidance lists the resources and suggested steps for identifying the copyright status and the appropriate use of works (including text, sound, graphics, photographs, video, software, etc.) that might be placed on the EPA Web site and the EPA Intranet, including Web sites EPA cosponsors or co-owns in partnerships.

2. SCOPE AND APPLICABILITY

This guidance is applicable to all new and updated works posted on the EPA Web site and the EPA Intranet, including Web sites EPA cosponsors or co-owns in partnerships (e.g., www.energystar.gov).

For purposes of this guidance, "Web site" or "Web pages" is used interchangeably and refers to the applicable Web sites above.

Works posted to Web pages include text, sound, graphics, photographs, video, software, etc. In addition, categories of works potentially covered by this policy include, but are not limited to: works of the U.S. Government; works created under a U.S. Government grant or other form of assistance agreement; works created under a U.S. Government contract; and works from all other sources (See Definitions Section).

3. AUDIENCE

All EPA personnel and contractor staff involved with developing or approving Web pages, including Assistant Administrators, Regional Administrators, Web managers and Web developers.

4. BACKGROUND

Because the Web makes it easy for individuals to reproduce copyrighted material, and potentially infringe the rights of the copyright owners, EPA established the Posting Copyrighted Works on EPA Web Site Policy and this guidance to deal with the identification and use of works that might be placed on EPA's Web sites.

5. AUTHORITY

The U.S. Copyright Act (www.copyright.gov/title17/circ92.pdf)

Federal regulations on rights under assistance agreements (40 C.F.R. Subchapter B, Parts 30 and 31)

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Federal regulations on rights under federal contracts (48 C.F.R. Part 52)

CIO Policy 2181.0 Posting Copyrighted Works on EPA Web Site, 10/25/07

<http://intranet.epa.gov/oei/imitpolicy/policies.htm>

6. GUIDANCE

1. Determine status of information

Content owners, i.e., individuals responsible for content of EPA pages, will determine the status of works (see Definitions section) to be posted to the EPA Web site to ensure that EPA does not violate copyright.

If content owners are considering posting material on the Web without permission or a license because they believe that the work falls under the "fair use" doctrine, they can consult with the Intellectual Property Law Practice Group in the Office of General Counsel for assistance in determining whether the posting would be a fair use.

Additionally, the content owner will inform the Content Coordinator for that office or Region that copyrighted material is being used under the "fair use" exception.

Note: Content owners who are considering utilizing the "fair use" exception of the copyright law are cautioned that the distinction between "fair use" and infringement is unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be used without permission. The EPA Web site will acknowledge the source of copyrighted material; however, such notice does not substitute for obtaining permission where there is the possibility that the "fair use" exception has been exceeded.

If content owners are unsure of the copyright status or of any specific licenses for the work, they can seek assistance from the Intellectual Property Law Practice Group in the Office of General Counsel, the Contracting Officer or Project Officer, or other appropriate EPA officials.

2. Obtain permission

If the work is protected by copyright and EPA does not have a license, the content owner will obtain a written license or permission (see Definitions section) from the copyright owner to, at a minimum, copy and post the copyrighted material on the Internet. The written license or permission must be kept for reference by the content owner or the person who posted the material. The scope of the license or permission must be posted to the Web site in connection with the copyrighted document so that the public can note any limitation of rights to use the work. This notice could also be accomplished by a link to another page from the copyrighted document.

A single notice will suffice when a collection of copyrighted materials on a single page share the same source and scope.

An example of a permission notice is provided in the "Copyright Issues of Special Interest to EPA Employees" document prepared by the Office of General Counsel.

3. Provide credit and attribution

- a. EPA will respect known copyrighted material on its Web sites through credit and attribution, and by providing the copyright notice.

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- b. If EPA's license to the work is limited, provide such limitations with the material so that the public can note the limitation to further use of the work.
 - c. If EPA's license allows further public use or distribution, provide this information.
4. Use citations when permission is not obtained

EPA will not post known or assumed copyrighted material without permission or license when the posting does not constitute a fair use.

When permission cannot be obtained and the posting would not constitute a fair use, the EPA Web site will use citations (i.e., name relevant documents and where they can be found and links when available) instead of presenting actual copyrighted material.

5. Identify copyrighted material in docket comments

When EPA identifies copyrighted material within or attached to an electronic comment on a docket, EPA will provide a reference to that material in the version of the comment that is placed online. The entire printed comment, including the copyrighted material, will be available in the physical docket.

7. RELATED DOCUMENTS

CIO 2191.0, Web Governance and Management Policy, 09/07/06
(<http://www.epa.gov/irmpoli8/ciopolicy/2191.pdf>).

Office of General Counsel information about Copyright issues: "Copyright Issues of Special Interest to EPA Employees" (<http://yosemite.epa.gov/oei/Webguide.nsf/create/copyright>).

8. ROLES AND RESPONSIBILITIES

- A. Assistant and Regional Administrators and senior managers at the same level have responsibility for all content owned by their program or Region on the EPA Web sites, including appropriate identification and treatment of copyrighted material.
- B. Office of the General Counsel is responsible for providing EPA Web page developers, individuals responsible for content (i.e., content owners), and other staff with guidance on "fair use" and copyright requirements.
- C. The Office of Public Affairs (OPA) and the Office of Environmental Information (OEI) lead the Web Council through a National Web Content Manager and National Web Infrastructure Manager, respectively. Collaborating with the Web Council, the Web Workgroup, and other appropriate entities, OEI and OPA develop procedures, standards, and guidance for epa.gov.

9. DEFINITIONS

"Content owner" is an EPA employee responsible for Web page content.

"Fair Use" is a doctrine that is codified in section 107 of the Copyright Act. That section has a list of the various purposes for which the reproduction of a particular work may be considered a "fair use," such as criticism, comment, news reporting, teaching, scholarship, and research (for a fuller discussion of "fair use," see Office of General Counsel information about Copyright issues: "Copyright Issues of Special Interest to EPA Employees").

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A “permission” or “license” is a grant of one or more rights from the copyright owner to another person to use a copyrighted work in a specified way. For example, in a permission or license, a copyright owner may agree to grant another person the right only to distribute the work internally or may grant more extensive rights, like the right to post the copyrighted work on the Internet.

The “Web Council” consists of a National Web Content Manager in OPA and a National Web Infrastructure Manager in OEI, with corresponding Content and Infrastructure Coordinators in each Region and program office. The Web Council also includes the Chair of the EPA Web Workgroup. The Web Council works with OPA and OEI to develop procedures, standards, and guidance for epa.gov.

The “Web Workgroup” (WWG) is the voluntary organization for EPA's Web community. Members join without a formal nomination. The Workgroup is led by an elected Chair and Steering Committee. The WWG provides feedback on proposed procedures, standards, and guidance for epa.gov.

“Web developer” or “Web page developer” is an EPA employee or contractor who is responsible for placing content into the required EPA template, making it attractive, and posting it to the server.

“Works” is a term used to refer to material that is copyrightable subject matter, such as text, sound, graphics, photographs, video, software, etc.

“Works of the U.S. Government” are works that are prepared by a federal government employee as part of the employee’s official duties. In the U.S. these works are not protected by copyright. Works from state, local or tribal governments are not included in this category and may be protected by U.S. copyright law.

“Works created under a U.S. Government grant or other form of assistance agreement” are works prepared by an assistance recipient and the recipient is entitled to assert copyright to these works; however, the U.S. Government retains a license to use the works for federal purposes.

“Works created under a U.S. Government contract” have to be evaluated on a case by case basis to determine their copyright status. Certain works created by contractors, such as published scientific or technical articles, are protected by the author’s copyright upon creation. In most other cases, however, the Contracting Officer must grant permission before a contractor may assert copyright in a work produced under the contract. Except in the case of computer software, when a contractor is permitted to assert copyright, the U.S. Government receives a broad license to use that work; however, that license does not extend permission beyond the government to the public. For computer software, however, when a contractor is permitted to assert copyright, the license to the government does not include the right to distribute the work to the public. If public dissemination is desired, the Special Works - Rights in Data clause might be used. The inclusion of this clause permits the government to require the contractor to assign the work to the government. Once the work is assigned, the government may then distribute it to the public. (For additional information see Office of General Counsel information about Copyright issues: “Copyright Issues of Special Interest to EPA Employees”.)

“Works from all other sources.” Because notice of copyright is no longer required for works created after March 1, 1989, and the current term of copyright protection is quite long, employees should assume that works from sources other than the three listed above (Works of the U.S. Government, Works created under a U.S. Government grant or other form of assistance agreement, and Works created under a U.S. Government contract) are protected by copyright unless marked otherwise.

10. WAIVERS

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Not applicable.

11. RELATED POLICIES, PROCEDURES AND STANDARDS

Office of General Counsel information about Copyright issues: "Copyright Issues of Special Interest to EPA Employees" (<http://yosemite.epa.gov/oei/Webguide.nsf/create/copyright>).

Related EPA policies, procedures, standards, guidance, and resources are included in the EPA Web Guide (www.epa.gov/webguide/standards).

12. MATERIAL SUPERSEDED

Not applicable.

13. ADDITIONAL INFORMATION

U.S. Copyright Office (www.copyright.gov) provides technical assistance to the Congress and to Executive Branch agencies, and provides information services to the public.

For further information about this procedure, please contact the Office of Environmental Information's Policy and Program Management Branch in the Office of Information Analysis and Access, or the Intellectual Property Law Practice Group in the Office of General Counsel.



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and Chief Information Officer
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