



Copyright

Policy Statement

As a scholarly community, the University of Vermont is committed to fostering teaching, learning, research, and the pursuit of knowledge. An important aspect to furthering this mission involves using the works of others in the University's academic setting while still respecting their intellectual property rights within the boundaries of copyright law. Apart from its interests in avoiding liability and resulting financial penalties both for the University itself and for those in the University community, the University strongly believes that respecting copyrights and adhering to copyright law is vital to maintaining the balance between the free flow of ideas and the advancement of the public interests served by copyright law.

Reason for the Policy

The purpose of this Policy is to provide faculty, students, and staff with guidance and assistance in determining: (1) when and to what degree use of a copyrighted work of a third party in teaching, research, and scholarly activities is an acceptable use of the work under copyright law; or, alternatively (2) when permission must be obtained from the copyright owner (unless it is clear that the University already has obtained a license to permit such use). For information concerning ownership issues relating to works authored by University faculty, students, or staff, please refer to the University's Intellectual Property Policy http://www.uvm.edu/policies/general_html/intellectualproperty.pdf

Applicability of the Policy

This policy applies to all University of Vermont faculty, staff and students.

Policy Elaboration

- I. **Copyright Generally.** Copyright is governed exclusively by Federal law. It protects, for a limited period of time, original works such as books, essays, films, photographs, music, television shows, video games, software, paintings, and web sites, as well as many other materials that faculty and students may desire to use for academic purposes. Copyright law does not protect ideas, facts, procedures, processes or concepts that may be described or explained in such works, but it can protect the way that such ideas, facts, procedures,

processes and concepts are expressed. The law entitles the copyright owner of a given work of authorship the exclusive rights of reproduction, first distribution, public display and performance, and creation of new works derived from or based on the original work. Copyright infringement, i.e., use of a copyrighted work in a manner that violates one of the above-mentioned exclusive rights, can subject a person (and, potentially, the University) to monetary penalties and damages. Such damages can either be based on harm to the owner or can be established by a court without regard to actual harm in amounts as high as \$30,000 (or in limited circumstances even \$150,000) per infringement.

II. Works and Materials that are Available for Use. Some works are not protected by copyright at all, such as works created by the U.S. Government and works that have fallen into the public domain. As a general rule, works published prior to 1923¹ are now freely available to use and are in the public domain; unpublished works may or may not be in the public domain depending on the date of the author's death. In addition, there are several exemptions under copyright law that permit the use of copyrighted materials for scholarly purposes such as exemptions for libraries, face-to-face classroom teaching, and certain distance education and course management web site uses. Further, many creators of copyrighted content make their works available for non-commercial copying and use under permissive licenses (e.g. the Creative Commons license). The University library also has numerous license arrangements and permissions for a wide range of materials that may be used for teaching and research purposes. Such licenses include access to the resources listed here: <http://library.uvm.edu/research/index.php?tab=iref&mode=subjects&subject=general>. If you are unsure as to whether the University has a license to use a specific work, please contact Bailey/Howe Acquisitions, (802) 656-8350.

III. The Fair Use Doctrine.² In addition to the exceptions stated above, copyright law recognizes that certain uses of copyrighted materials are deemed lawful even without permission from the copyright owner. The U.S. Copyright Act provides that “the fair use of a copyrighted work . . . for purposes such as criticism, comment, news reporting, *teaching (including multiple copies for classroom use)*, *scholarship, or research*, is not an infringement of copyright.”

Unfortunately, there are no bright line tests or reliable rules for determining whether or not a particular use of another's copyrighted materials is a fair use, even if it is for scholarship or research purposes. The determination is highly fact specific, and therefore must be made on a case-by-case basis. Section 107 of the U.S. Copyright Act provides four non-exclusive factors that should be considered when determining if a given use of a copyrighted work is fair:

- a) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- b) The nature of the copyrighted work;
- c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

¹ This date will change over time. Consult <http://www.copyright.gov> for information

² Note that a Fair Use analysis may not be needed for uses covered by one of the numerous University licenses. See Procedures below on how to obtain permission to use copyrighted material.

- d) The effect of the use upon the potential market for or value of the copyrighted work.

All four factors above are considered when determining if a particular use is fair, but copyright law does not specifically limit an analysis to these four factors. Other factors can be considered, depending on the particular use. A court's determination that a use of a copyrighted work under one set of circumstances is fair or not does not automatically mean that a similar use under a different set of circumstances would result in the same conclusion.

If the University does not have a license covering the proposed use, and after completing the fair use analysis, you believe that your proposed use is unlikely to be a fair use, it still might fall under the other statutory exemptions discussed below such as the face-to-face teaching exemption or the TEACH Act. If no exemptions apply, permission must be obtained from the copyright owner before using the work as provided in the section below.

- IV. **The First Sale Doctrine.** The physical ownership of an item, such as a book or a DVD, is not the same as owning the copyright to the work embodied in that item. Under the “first sale doctrine,” ownership of a physical copy of a copyright protected work permits lending, reselling, disposing, etc. of that copy. The doctrine does not permit reproducing the material, publicly displaying or performing the material, or otherwise engaging in any of the acts reserved for the copyright holder, because the transfer of the physical copy does not include transfer of the copyright to the work.³
- V. **Classroom Teaching Activities.** Copyright law allows for an exemption for the performance or display of copyrighted materials during face-to-face classroom teaching. This includes the ability to show a full-length movie during a class to facilitate discussion and learning. This exemption only allows for the display or performance of a work, however, and does not allow for copying or distributing the work.
- VI. **The TEACH Act and Distance Learning.** The TEACH Act, a recent amendment to the copyright law, helps to extend the face-to-face classroom teaching exemption to mediated distance learning online courses. The Act exempts from liability the transmission of a performance or display of a copyrighted work by an accredited, non-profit educational institution to students officially enrolled in a specific course. The performance or display must be part of instructional activity at the direction or supervision of the class instructor, and the use must be an integral part of a class session. Technological measures must also be applied to prevent students from retaining the works beyond the class session. If you have questions regarding the TEACH Act, please see the following link:
<http://copyright.lib.utexas.edu/teachact.html>.
- VII. **Print and Electronic Course Packs.** Use of ten percent of a book with fewer than ten chapters or of a book that is not divided into chapters, or of no more than one chapter or its equivalent from a book of more than ten chapters, for educational instruction purposes is generally considered “fair use”. Inclusion of greater portions of copyrighted articles, chapters, images, or other works included in any print or electronic course pack must be used with permission from the copyright holder, or

³ This issue regularly arises in the case of letters, the content of which might be desired for use in a scholarly work; even if you have access to the letter e.g. through its recipient, it is the author of the letter (or his or her heirs) that owns copyright in the content.

through a license obtained by the University. To learn about the many works included in licenses obtained by the University, please contact Print and Mail Center, (802) 656-2960. Note that repeat use of copied or digitized material pursuant to a license from semester to semester is permitted, but it is important that the responsible instructor check each semester to make sure that the terms of the applicable license have not changed.

- VIII. **Course/Learning Management System Web Sites.** The preferred online course management provider at the University is Blackboard. See: http://www.uvm.edu/ctl/?Page=blackboard/index.php&SM=m_blackboard.html. Use of ten percent of a book with fewer than ten chapters or of a book that is not divided into chapters, or of no more than one chapter or its equivalent from a book of more than ten chapters, for educational instruction purposes is generally considered “fair use”. Inclusion of greater portions of copyrighted articles, chapters, images, or other works uploaded on Blackboard must be used with permission from the copyright holder or through a license obtained by the University. Where content is available online at another web site, faculty members must provide a link to such content instead of uploading a copy of a specific work in that web site to Blackboard. This procedure alleviates many copyright concerns.

To learn about the many works included in various licenses obtained by the University, please contact Bailey/Howe Acquisitions, (802) 656-2632. If you need to request permission to use a copyrighted work, please contact Bailey/Howe Reserve Department, (802) 656-2134, bhreserv@uvm.edu.

- IX. **Course Reserves.** Faculty may request to place copies of various works, books, articles, and supplemental materials on reserve, either electronically or in print, for students to review. As a guideline, for a given course in a given semester, use of ten percent of a book with fewer than ten chapters or of a book that is not divided into chapters, or of no more than one chapter or its equivalent from a book of more than ten chapters, for educational instruction purposes is generally considered “fair use”. Inclusion of any greater portions of a book, article or other written work may require obtaining copyright permission. If the Library owns a copy of a publication that is requested to be placed on reserve, however, the library may place that copy on reserve without obtaining copyright permission. In addition, the Library may, if it has the appropriate licenses, digitize the copy and make it available to students via the electronic reserve system. See: <http://library.uvm.edu/services/reserves/> If you have any questions regarding the E-Reserve system, please contact Bailey/Howe Reserve Department, (802) 656-2134, bhreserv@uvm.edu.
- X. **Multi-Media Presentations.** The Conference on Fair Use Guidelines issued guidelines in 1997 under which educators may incorporate portions of lawfully acquired copyrighted works when producing their own, live, educational multi-media presentations. These guidelines, while not part of the copyright law, are generally followed by the courts. Note, however, that these guidelines do not apply in the cases of presentations that are available to the public online or sold commercially. Note also that a court has recently held that these guidelines do not apply to e-reserves. These guidelines provide that content may be included where the multi-media presentation includes:

- a) No more than ten percent, or three minutes of a motion based work, whichever is less;
- b) No more than ten percent and in any event no more than thirty seconds of a song or video;
- c) No more than ten percent of a text; and
- d) Use of photographs and illustrations provided that no more than ten percent or fifteen images emanate from the same source, and no more than five images from any one artist or photographer.

The use of film clips and other media in on-line courses is not strictly limited by the guidelines. Use of images or other media on websites or in on-line learning materials must be consistent with fair use and restricted to that amount that is necessary for the educational purpose. Access to such sites and ability to download or otherwise reproduce the materials should be limited wherever feasible. Attribution to the source of such materials should be included. A course website and/or other electronic educational sites must contain a clear statement that images or media available through the site are protected by copyright and are available only for the educational purpose of the site and may not be downloaded or distributed. Materials posted to a course website.

Streaming media licenses have been acquired for many media sources. For a list of titles, please contact Bailey/Howe Media Resources, (802) 656-1947, <http://library.uvm.edu/media/>.

- XI. **Obtaining Permission to Use Copyrighted Materials.** The University has many licenses to use copyrighted works of various types. These licenses include access to various journal articles, databases, texts, and other resources listed here: <http://library.uvm.edu/research/index.php?tab=iref&mode=subjects&subject=general> If the University does not have a license to use the copyrighted work, or if one of the exemptions described above does not apply, then permission to use the copyrighted work must be obtained. A permission request can usually be sent to the publisher or author of the work. If you believe that you need to request permission to use a copyrighted work, or if you have questions about the process, please contact Bailey/Howe Reserve Department, (802) 656-2134, bhreserv@uvm.edu.
- XII. **Courses Recorded by Students.** Students may not record lectures by audio or video without the consent of the course instructor. If permission is granted, students agree to only use these recordings for personal, educational use. Students are not allowed to post the recordings online or distribute the recordings. Any student who may require lectures to be recorded for disability-related reasons should contact the Academic Support Programs office for Accommodations, Consultation, Collaboration, and Educational Support Services (“ACCESS”) through the Universal Design Technology Lab, 2nd Floor, Bailey/Howe Library, (802) 656-5537.

Definitions

None

Procedures

Obtaining Permission to Use Copyrighted Materials. The University has many licenses to use copyrighted works of various types. These licenses include access to various journal articles, databases, texts, and other resources listed here:

<http://library.uvm.edu/research/index.php?tab=iref&mode=subjects&subject=general>

If the University does not have a license to use the copyrighted work, or if one of the exemptions described above does not apply, then permission to use the copyrighted work must be obtained. A permission request can usually be sent to the publisher or author of the work. If you believe that you need to request permission to use a copyrighted work, or if you have questions about the process, please contact Bailey/Howe Reserve Department, (802) 656-2134, bhreserv@uvm.edu.

Permission to Use Works for University Copyrighted Materials. Requests to use works for which the University has copyright ownership should be directed to Office of the General Counsel, (802) 656-8585, general.counsel@uvm.edu.

Considerations to Keep in Mind.

- a) **Provide A Link.** Pointing others to copyrighted works is preferable, as it does not create a copy of the content on a University server.
- b) **Be Careful When Downloading.** Just because a work is posted online does not mean that the copyright owner has granted permission to use the work. Even if the original of that work is in the public domain, copyright of the digital version is held by the person or entity responsible for digitizing the original work.
- c) **Be Careful When Uploading.** Use of third-party material in a work may be acceptable within the classroom and in BlackBoard, but posting such material on the open web on your website or in a blog may raise copyright concerns.

Forms

None

Contacts

Questions related to the daily operational interpretation of this policy should be directed to:

Mara Saule, Dean, Libraries and Learning Resources
(802) 656-2020
Mara.Saule@uvm.edu

The Senior Vice President and Provost is the official responsible for the interpretation and administration of this policy.

Related Documents / Policies

Intellectual Property Policy

http://www.uvm.edu/policies/general_html/intellectualproperty.pdf

Licensing – Trademarks Policy

http://www.uvm.edu/policies/general_html/licensing.pdf

Trademarks Policy

http://www.uvm.edu/policies/general_html/trademark.pdf

Resources

U.S. Copyright Office: <http://www.copyright.gov>

Copyright Clearance Center: <http://www.copyright.com>

Creative Commons: <http://creativecommons.org>

Copyright Crash Course: <http://copyright.lib.utexas.edu>

Fair Use:

<http://www.copyright.com/>

<http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>

Public Domain: <http://copyright.cornell.edu/resources/publicdomain.cfm>

TEACH Act: <http://copyright.lib.utexas.edu/teachact.html>

Code of Best Practices in Fair Use for Academic and Research Libraries.

<http://www.arl.org/bm~doc/code-of-best-practices-fair-use.pdf>

Effective Date

Approved by the President September 20, 2013