

College of William and Mary
Policy and Guidelines for the Use of Copyrighted Works

Purpose: All members of the William and Mary community must be aware of and adhere to the provisions of the United States Copyright Law. We have a moral and legal obligation to honor and abide by copyright rules when we use protected works in support of the academic mission. This policy has been approved by the Provost upon recommendation of the Faculty Assembly.

Obligations: The administration, through the Office of the Provost acting on the basis of recommendations from the Faculty Assembly, is obligated to develop this policy and communicate it to the members of the community. All members, in particular the instructional faculty, are obligated to be aware of these policies and guidelines and to abide by them. Whenever questions arise concerning the fair use of copyrighted materials, it is the obligation of the faculty member to seek clarification or guidance from the Office of the Provost or those designated by the Provost for this purpose. The current designee is the Dean of University Libraries.

The Office of the Provost will post these policies on the Provost's website. Faculty will be reminded once a semester of these policies and guidelines. With the approval and posting of these guidelines, the responsibility for following best practices in fair use of copyrighted materials lies with individual faculty and not with any college or contracted service-provider that may provide printing and duplicating services on behalf of the College. The College is responsible for the informational technology infrastructure and its related security.

Definition of copyright: A copyright grants to its owner the right to control an intellectual or artistic creation, including the right to profit from others using the work in specific ways without permission or from the sale and performance of the work. Copyright protection extends not only to copies of the written word and recordings of sound, but to visual images such as photographs, animated images, motion pictures, or videotapes. It also includes taped live performances.

Definition of Fair Use: Fair use is a legal principle that provides certain limitations on copyrighted materials. The following evaluation provides guidance on the application of the fair use principle for faculty, staff, and students who wish to use copyrighted materials rather than seeking prior authorization from the copyright owners for non-commercial educational purposes. It is important to realize that there are no bright lines and assessment of whether or not an intended use is a fair use requires a thoughtful analysis of the context and intentions that underlie that use. As illustrative examples, under fair use, a teacher or researcher is allowed a rather limited amount of copying without the copyright owner's permission for such purposes as: 1) criticism, 2) comment, 3) news reporting, or 4) teaching. These are not the only potential fair uses, but they do apply to many of the activities in which faculty engage.

Photocopying Guidelines for Teaching and Research: For our purposes, we will concentrate on concerns as to fair use of copyrighted materials in teaching and instruction and for research, broadly construed. There are important differences depending on whether a document or work is in the public domain or not.

Works in the Public Domain: If a work is in the public domain, one has unrestricted photocopying privileges. Generally speaking, these include several categories of materials:

1. Published works that were never copyrighted
2. Works published before 1923
3. Works published before 1989 which do not contain a notice of copyright, unless that work "has been rescued" subsequently and now is copyrighted. Any work published after March 1, 1989 is protected by copyright even if no notice of copyright is present.

4. Published works with expired copyrights: Copyrights dated 75 years or more prior to the current year may or may not have expired, depending on whether the copyright owner renewed the copyright after the first term of protection
5. Government publications

For a more detailed description of what is and is not copyrighted depending on date of publication see <http://www.unc.edu/~unclng/public-d.htm> for a description by Lolly Gasaway of the UNC Library.

Works not in the public domain: Ordinarily, copying copyrighted material without the permission of the copyright owner is a violation of the owner's copyright. The copyright law, however, creates limited exemptions to allow copying for face-to-face teaching or "fair use." Under fair use, a teacher or researcher is allowed a limited amount of copying. There are some works of which copying is completely unrestricted. There are other materials for which copying is always forbidden.

There is no clear-cut test for evaluating fair use and not all educational uses are fair uses. Furthermore, the rules apply wherever the copying is done; in other words, using on-campus or off-campus copy shops, the same guidelines apply.

How do I know if my intended educational use is a fair use? There are four essential factors that determine whether a use is a fair use. The following four questions serve as guidelines only. The answers to each of these questions are often weighed in an imprecise way by the courts, but you can feel secure that yours is a fair use if you meet all of these criteria, less so, though not necessarily in violation of copyright law, if you only meet a few.

- 1) What is the purpose of the use? Educational purposes and single copies for non-profit or personal use are more likely fair use. Uses for commercial purposes would require permission.
- 2) What is the nature of the material? Factual, scientific information, or historical data favor fair use. Creative fiction, unpublished works, music, novels, films, plays would most likely require permission.
- 3) How much of the work will be used? If the amount is a small proportion of the work, it is more likely to be considered a fair use. A substantial portion or central portion of the work would require permission.
- 4) What is the effect of the use of the copied materials on the market of the original work? If the use would deny the owner of the copyright his/her due, then the use would not be deemed a fair use. If the user owns or has purchased the original work and this is one of few copies made which does not affect the potential market for the original, this would be an application of fair use.

Fair Use and the digital works – specifically fair use of copyrighted materials on Blackboard: On November 2, 2002, the "Technology, Education and Copyright Harmonization Act" (aka the TEACH Act), was signed into law by President Bush. This act provides relatively specific guidelines as to what uses are and are not fair uses with respect to copyrighted materials and the use of such on-line instructional programs as Blackboard. The TEACH Act is an effort more clearly to define how digital works may be used in online education. In order for the TEACH Act to apply, one must meet all the following criteria:

- The institution must be a nonprofit accredited educational institution or a governmental agency
- The institution has a policy on the use of copyrighted materials
- The institution provides accurate information to faculty, students and staff about copyright
- The institution's systems will not interfere with technological controls within the materials you want to use
- The materials you want to use are specifically for students in your class
- Only those students will have access to the materials
- The materials will be provided at your direction during the relevant lesson
- The materials are directly related and of material assistance to your teaching content
- Your class is part of the offerings of the institution
- You will include a notice that the materials are protected by copyright
- You will use technology that reasonably limits the students' ability to retain or further distribute the materials
- You will make the materials available to the students only for a period of time that is relevant to the context of a class session
- You will store the materials on a secure server and transmit them only as permitted by this law
- You will not make any copies other than the ones you need to make the transmission
- The materials are of the proper type and amount the law authorizes:
 - Entire performances of nondramatic literary and musical works
 - Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
 - Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching
- The materials are not among those the law specifically excludes from its coverage:
 - Materials specifically marketed for classroom use for digital distance education
 - Copies you know or should know are illegal
 - Textbooks, coursepacks, electronic reserves and similar materials typically purchased individually by the students for independent review outside the classroom or class session
- If you are using an analog original, you checked before digitizing it to be sure:
 - You copied only the amount that you are authorized to transmit
 - There is no digital copy of the work available except with technological protections that prevent your using it for the class in the way the statute authorizes

In general, you may assume that 1) with the provision of this policy, 2) if you use Blackboard in your courses, and 3) if you abide by the other specific provisions that relate to the kinds of materials used, you will meet the general provisions of the TEACH Act as described above.

With respect to specific appropriate and fair uses, the following chart was developed by Wake Forest University for the application of copyright restrictions as they apply to the use of Blackboard. N.B., as a general rule, simply putting an item up in Blackboard does not exempt an instructor from copyright regulations. This chart provides a general idea of what is ok to post (= green light) and what is forbidden (-red light):

Item	Green Light	Red Light
Web site containing copyrighted material	Link to the web site in Blackboard	Copying and pasting the content of the web site into Blackboard
Copyrighted image from a website	Put up in Blackboard for ONE semester	Use from semester to semester without getting permission
Article from Library Database	Link to the article	Download the article to your hard drive and then post in Blackboard
Scanned personal picture	Put up anywhere in Blackboard	
Scanned copyrighted image	Put up in Blackboard for ONE semester	Use from semester to semester without getting permission
Scanned chapter from a book	Put up in Blackboard for ONE semester	Use from semester to semester without getting permission
Audio Files	As long as it meets other fair use and TEACH guidelines, put up in Blackboard for limited time (10 days)	Use from semester to semester without getting permission or keep up for longer than 10 days.
Video Files	As long as it meets other fair use and TEACH guidelines, put up in Blackboard for limited time (10 days)	Use from semester to semester without getting permission or keep up for longer than 10 days.

Portion Restrictions:

Media Allowable Portion for Fair Use

Motion Media (e.g. video) Up to 10% or 3 minutes, whichever is less

Text material Up to 10% or 1000 words, whichever is less

Music, lyrics, music videos Up to 10% but no more than 30 seconds

Illustrations, photographs No more than 5 images from an artist/photographer, or no more than 10% or 15 works from a published collective work

Numerical data sets up to 10% or 2500 fields whichever is less e.g. database) used with permission, WFU

Approved by the Faculty Assembly of the College of William and Mary, March 22, 2005

Approved by the Provost, College of William and Mary, March 23, 2005

If you have any questions on this policy, please contact James Heller, Director, Wolf Library, at heller@wm.edu.