

Copyright Policy for Vanderbilt's Course Management Systems

Introduction

Vanderbilt both respects intellectual property law and promotes the generation of new knowledge and creativity in our campus community. This policy seeks to promote and respect the rights of students and faculty, who provide course material and content to course management systems (CMS – online platforms with tools and features intended to support teaching and learning) at Vanderbilt, e.g. Brightspace, as well as the rights of third-party producers whose content may be used in our teaching mission.

The aim of this policy is twofold: (1) to facilitate the teaching mission of Vanderbilt while (2) conforming with federal copyright law.

Copyright infringement violates university policy. As stated in Vanderbilt's Policy on *Acceptable Use of Information Technology* "unauthorized copying of copyrighted material" is prohibited and may be subject to civil and criminal penalties. See also the [Vanderbilt Statement of the Honor Code](#).

Background

Copyright Law

The copyright law of the United States ([17 USC](#)) governs the use of copyrighted materials, including materials used for teaching and research at nonprofit universities. The copyright law provides copyright holders with many rights, including protections against unauthorized reproductions, derivatives, and public performances or displays. However, there are also significant exceptions to these rights, including the right to make fair use of copyrighted materials in certain contexts ([17 USC §107](#)) as well as the right to perform and display materials in classrooms ([17 USC §110](#)).

Licensing

The most straightforward way to avoid infringing copyrights is to license copyrighted materials. For example, the Vanderbilt libraries license many scholarly journals, and those licenses typically cover use of those journals by students and faculty in courses at Vanderbilt. While a nonexclusive license need not be written in order to be valid, the duration and scope of the license should be recorded in writing to avoid any misunderstanding.

Fair Use

The purpose of copyright law is to provide incentives for authors to advance the arts and sciences; it achieves this purpose by granting them temporary monopolies over their

works. However, these monopolies are not absolute. Significant exceptions exist in order, for example, to prevent copyright from becoming a barrier to free expression and the open exchange of ideas, particularly in institutions of higher education.

The fair use limitation to copyright ([17 USC §107](#)) provides important exemptions in order to facilitate teaching and research. As the statute reads, “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.” The statute then provides four factors to assist with determining whether an unlicensed use of copyrighted material is, in fact, fair: (1) purpose of the use; (2) nature of the work; (3) amount of the work used; and (4) effect on the potential market for the work.

No “bright line” exists to separate fair uses from infringing uses. However, it may generally be assumed the first factor (“purpose of the use”) favors educational and scholarly uses. If the material at issue is factual or informational, then factor two (“nature”) may also weigh in favor of fair use. Faculty and students should evaluate the effect on the owner’s customary markets—in other words, will the copyright holder lose actual or potential sales or royalties due to this use?—when considering the fourth factor. The amount of material that may be considered fair under the third factor may depend on how strongly or weakly the other factors support the overall finding of fair use. A finding of fair use must be conducted on a case-by-case basis.

Guidelines for Posting Materials to Course Management Systems

Public Domain

Materials in the public domain may be used freely. Materials can enter the public domain for a variety of reasons. Two of the most common are works published in the United States prior to 1923, for which the copyright term has expired, and works of the U.S. government, which under 17 U.S.C. § 105 are ineligible for copyright protection. Mere lack of a copyright notice on a particular copy does not always imply that material is in the public domain.

Copyright Holder

Any CMS user who owns the copyright for materials may make them available without restriction and may impose limits on further distribution. (Note that if materials have been submitted for publication, copyright may have been transferred to the publisher.) When students, faculty, or staff make available their original materials to the CMS, they grant a royalty-free non-exclusive license for those materials to be hosted and shared on the third-party CMS platform. The scope of this non-exclusive license is limited to the registered users in the course and for the duration of the course offering. Note that users may be able to download copies of materials posted to the CMS depending on the settings used when sharing those materials. (Downloading is turned on by default for Brightspace’s content pages, but turned off by default for Brightspace’s My Media area.) Vanderbilt does not assert ownership of faculty or student materials above and beyond this narrow license, though CMS providers may require broader licenses.

For more information about Vanderbilt's policy on Technology, and Literary and Artistic Works, see the [Faculty Manual](#).

Materials Already Licensed to the University

Vanderbilt licenses text, data, audio and visual materials for academic use. The library, for example, has purchased licenses for the use of many copyrighted works, including journals, newspapers, electronic books, and images accessible through the library catalog and databases. The terms of the licenses generally allow linking to resources, but not posting copies to learning management systems.

Open Access

Works available from identifiable, open-access sources (such as open archives, open-access journals, and digital materials available under [Creative Commons](#) licenses) may be uploaded to the CMS. Note that requirements for particular open licenses vary; be sure to check the details of the open license for specific materials. Also, users should insure that contact information is available for these sources in the event questions arise about their authority to grant such licenses.

Instructors looking for open-access digital texts may search institutional repositories at various universities. Vanderbilt's institutional repository is [DiscoverArchive](#). At times, an institutional repository will contain a CC-licensed alternative of a digital text assigned for a course, which can be useful for texts not already licensed by Vanderbilt. For open access digital images, instructors can search Flickr, Pixabay, Wikimedia Commons, and even Google Images, provided the appropriate filter for usage rights (e.g. Creative Commons) is applied when searching.

Currently Unlicensed Copyrighted Materials

Copyrighted material to which the university does not already have a license should not be made available in the CMS unless (1) a license is obtained or (2) a fair use rationale can reasonably be made for its use.

Obtaining a License

Copying and distributing unlicensed copyrighted materials through a CMS may require obtaining the permission of the copyright owner, frequently including payment of a royalty. The [Copyright Clearance Center in the Library](#) as well as CMS tools, e.g. Leganto, can process permission requests, manage payments, and maintain records. These licenses typically allow distribution of copies only to students enrolled in specific course sections and only for the duration of the course. See [Placing Items on Reserve](#) for how library staff can assist in clearing copyright and posting materials to the CMS. Licensing charges and fees will be passed through to the relevant school or college.

Fair Use

If the University does not already have a license for the material, users may also consider relying on fair use when making materials available in the CMS. Fair use decisions must be made on a case-by-case basis and should be documented each time material is made available. A fair use analysis should consider the following four factors: purpose of the use, nature of the work, amount of the work used, and the effect of the use on the market for the work. Use this [checklist](#) to document and maintain a record of fair use analysis.

Additionally, any digital files made available in the CMS should not circumvent Digital Rights Management (DRM) technologies apart from the [exceptions permitted by the Librarian of Congress](#). There should also be no contractual obligations—i.e. End User License Agreements (EULAs)—prohibiting educational uses of the digital files. Finally, copies of the digital files must have been lawfully obtained.

Access to course materials made available under fair use guidelines or under a course-specific license must be disabled at the conclusion of the course/semester.

A fair use analysis may not always conclude with a clear answer. The analysis may differ according to the kinds of digital media uploaded to the CMS. This policy does not enumerate all the considerations that must be taken into account when conducting a fair use analysis. It does note, however, a few salient points of concern relevant to particular formats. These fair use guidelines have been informed by the [ARL \(Association of Research Libraries\) Code of Best Practices in Fair Use](#). For assistance in making fair use judgments and using the Fair Use checklist, contact members of the library staff.

- Literary Works and Musical Compositions

Literary works include any work of authorship expressed in words or numbers whether fictional or nonfictional. Musical compositions may be embodied in sheet music, scores, recordings, or any other written or digital medium. Unlicensed copyrighted works such as journal articles and musical scores may only be placed in the CMS after proper fair use analysis.

- Pictorial Works

Pictorial works include photographs, drawings, paintings, charts, graphics, maps, and any other form of illustration. Unlicensed copyrighted pictorial works such as digitized art slides and images in PowerPoint presentations may be placed in the CMS only after proper fair use analysis.

- Audiovisual Works

Audiovisual works include movies, television episodes, screencasts, and webcasts. Unlicensed audiovisual works such as feature films and educational documentaries may be placed to the CMS only after proper fair use analysis.

In general, fair use will only allow portions of audiovisual materials to be posted to the CMS. Although there are exceptional cases, using entire films or other audiovisual productions is rarely considered fair use. In such cases, users should make available only limited portions or “clips” of the audiovisual work.

In Brightspace, audiovisual works should be uploaded using My Media and not directly to a Brightspace content area, in order to prevent unauthorized downloading and reproduction. Please consult Brightspace Support at the Center for Teaching for more information about how to use this tool.

- Sound Recordings

Sound recordings include recorded performances in any form regardless of their delivery format. The copyright in the recording of a musical performance is separate from the copyright in the underlying composition and must be cleared as well. Unlicensed copyrighted sound recordings, such as podcasts, MP3s, WAV files, and RealMedia may be placed to the CMS only after proper fair use analysis.

In general, fair use will only allow portions of sound recordings to be posted to the CMS. Although there are exceptional cases, uploading entire sound recordings is rarely considered fair use. In such cases, users should make available only limited portions of “clips” of the sound recording.

In Brightspace, sound recordings should be uploaded using My Media and not directly to a Brightspace content area, in order to prevent unauthorized downloading and reproduction. Please consult Brightspace Support at the Center for Teaching for more information about how to use this tool.

Spontaneity

Copyrighted materials of direct relevance to a course that come to an instructor’s attention close in time to a class session (e.g. within 24 hours) may usually be shared with students in the class, including through the CMS. However, these materials should be removed immediately after the class session, unless a license can be obtained for continued use. Such materials may remain available through the CMS while the Copyright Clearance Service seeks a license.

Help

Questions about posting copyrighted materials to Brightspace may be directed to Brightspace@vanderbilt.edu. Questions about copyright in general may be posed to the library, via [Ask a Librarian](#). Only the [Office of General Counsel](#) is qualified to provide legal advice to members of the Vanderbilt community.