

## **COPYRIGHT AND THE TEACH ACT**

### **WHY ARE WE HERE?**

- To empower faculty to foster creative instruction through the in-classroom and on-line delivery of copyrighted material.
- To protect faculty and the University from liability for copyright infringement.

### **3 WAYS TO USE COPYRIGHTED MATERIALS WITHOUT OBTAINING PERMISSION**

1. Fair Use
2. Classroom Guidelines
3. TEACH Act

### **FAIR USE**

#### **WHAT IS IT AND WHY DO I CARE?**

- A shadowy forest with changing boundaries...enter at your own risk.
- Case law and the Copyright Act provide “fair use” limitations to the exclusive rights of copyright holders. The test is applied to determine whether an otherwise infringing use comes within the fair use exception is the “four factors” test:
  - 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 (e.g., whether the work has been published and the strength of its copyright);
  - the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
  - the effect of the use upon the potential market for or value of the copyrighted work.
- [Villanova Guidelines](#) for reproduction and distribution of copyrighted materials.
- Are there any rules of thumb for classroom use of copyrighted materials?
  - University of Texas Rules of Thumb  
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm#rules>
- If the rules of thumb do not cover my classroom situation, is there a test I can use to determine if my use is “fair use”?
  - <http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm#test>

#### **HOW IS FAIR USE SIMILAR TO THE TEACH ACT?**

- Both are part of the Copyright Act.
- Both place restrictions on copyright protection.
- Both expand faculty’s ability to use copyrighted works.

## **HOW DOES FAIR USE DIFFER FROM THE TEACH ACT?**

- The TEACH Act expanded higher education’s ability to perform and display copyrighted works in digital online instruction.
- As an amendment to copyright law, the TEACH Act allows educators to transmit certain copyrighted works without permission from the copyright holder, provided certain conditions are met.
- The TEACH Act creates a safe harbor for institutions. Individual instructors who commit copyright infringement remain liable under the TEACH Act.

## **Institutional Level Requirements:**

1. Be an accredited nonprofit educational institution (Villanova University is) (or government body)
2. Have a copyright policy (presumably making violation of copyright subject to disciplinary action) [see [Copyright Policy](#)]
3. Make available educational materials on copyright (provide “informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright”) [see [Copyright Educational Materials](#)]
4. Provide “notice to students that materials used in connection with the course may be subject to copyright protection” [see [Sample Copyright Notice](#)]
5. Conversion of analog works to digital formats is allowed only where
  - a. no digital version is “available” to the institution, or
  - b. the digital version is locked with technological protection measures that prevent its use under the TEACH Act.
6. For digital transmissions:
  - a. apply technological measures that will “reasonably prevent retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session<sup>1</sup>”;
  - b. apply technological measures that will “reasonably prevent ... further dissemination of the work in accessible form by such recipients to others” (e.g., .pdf restrictions on copying or printing file); and
  - c. not interfere with the technology protections used by the copyright owners to prevent retention or unauthorized dissemination.
7. These requirements for digital transmissions are sometimes referred to as “downstream controls” or as “technological protection measures (TPM)” or as “digital rights management (DRM).”

Villanova must make a “reasonable” effort to protect against copyright infringement. One way of doing so is to keep the digital rights management current with new technology developments.

## **Instructor Level Requirements:**

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<sup>1</sup> the period of time a class meets in one day.

1. Make sure the work is not a digital educational work (produced or marketed primarily for online teaching)
2. Make sure the work has been lawfully made and acquired (cannot use source material if you know or have reason to know it is infringing copyright)
3. Use of the work is at direction of or under supervision of the instructor for the course
4. Use of the work is an integral part of the class session
5. Use of the work is part of systematic mediated instructional activity of the institution
6. Limit reception to students in the course (the transmission must be intended solely for, and to the extent technologically feasible, restricted to, “students officially enrolled in the course for which the transmission is made”)
7. Use of the work is directly related and of material assistance to the teaching content of the transmission
8. Use of the work is limited to:
  - a. display of a work to an extent no greater than allowed in a live classroom
  - b. performance of all of a nondramatic literary or musical work, and
  - c. performance of a reasonable and limited amount of any other work
9. Provide notice to students: “The materials on this course website are only for the use of students enrolled in this course for purposes associated with this course and may not be retained or further disseminated.”

### **CAN I SHOW A FILM IN CLASS? YES**

Copyright law has long granted faculty flexibility in using copyrighted works for “face-to-face” teaching. It allows:

performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made... (17 U.S.C. 110(1)).

This means, for example, no copyright permission is needed to show slides or play a movie in the classroom.

### **CAN I SHOW A FILM ONLINE / MAKE CLIPS AVAILABLE ONLINE? NO AND YES, IF...**

The TEACH Act allows educational transmissions to display works to the extent comparable in face-to-face teaching. “Display” typically means to show a still image.

The law also allows transmissions of a performance<sup>2</sup> of all of nondramatic<sup>3</sup> literary<sup>4</sup> or musical works.

The law allows transmissions of a performance of a reasonable and limited portion<sup>5</sup> of other types of works. This would include audiovisual works like dramatic films/videos, and operas and musicals.

Most importantly, the law now allows transmissions to any location; previously they had to be to a classroom or comparable setting. For example, WebCT, Blackboard, and online course reserves are permissible forums of transmission.

To take advantage of these multimedia options without going through a copyright clearance process, educators must satisfy the TEACH Act requirements, generally stated they are:

1. Having a copyright policy in place at the University-level.
2. Providing training to University faculty and staff on copyright.
3. Restricting access to copyrighted works made available online to instructors and students who are registered in the class.

### **WHERE CAN I LEARN MORE?**

- Visit the North Carolina State University TEACH Act Toolkit:
  - <http://www.lib.ncsu.edu/scc/legislative/teachkit/scenarios.html>
- Take the University of Texas Copyright Crash Course:
  - <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>

### **WHERE DOES VILLANOVA POST ITS COPYRIGHT POLICIES?**

- On main campus:
  - Office of the General Counsel: <http://www.villanova.edu/ogc/>
  - Academic Affairs: <http://www.vpaa.villanova.edu/handbook/policies/>
  - Falvey: <http://library.villanova.edu/services/faculty/copyright2.htm>

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<sup>2</sup> To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

<sup>3</sup> A dramatic work is performed by telling a story through audible or visual depiction of dialogue and action, such as a stage play or opera. Performances of nondramatic literary or musical works would be every other type of performance; e.g., reading from a novel or playing music.

<sup>4</sup> “‘Literary works’ are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.” 17 U.S.C. 101

<sup>5</sup> Whole movies cannot be digitized and made available through distance education.

- UNIT: <http://www.villanova.edu/unit/policies/copyright/>
- At the law school:
  - Library: <http://www.law.villanova.edu/library/facultyservices/>

**AFTER I HAVE REVIEWED THESE MATERIALS, TO WHOM DO I GO WITH COPYRIGHT QUESTIONS?**

- Faculty should approach [Luisa Cywinski](#) at Falvey Library, [Joan Lesovitz](#) at UNIT with technical questions, or [Michael George](#) at Graphic Services regarding copyright clearances.
- For more information regarding incorporating instructional technology into courses, contact [Carol Weiss](#) at VITAL.
- Faculty should consult with their department chair about non-technical (legal or procedural) matters.
- Department Chairs should consult with the designated Associate Dean.
- Associate Deans should consult with the Associate Vice President for Academic Affairs or the Office of Vice President and General Counsel.