

Policy on Use of Copyrighted Material by Faculty, Staff and Other College Employees, and Students of the College

Information on Fair Use and Copyright

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OUTLINE

Policy on Fair Use and Use of Copyrighted Materials of Third Parties

Information on Fair Use and Copyright

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Policy on Use of Copyrighted Material by Faculty, Staff and Other College Employees, and Students of the College.

(Faculty Handbook, 8.10, July 1, 2012 Edition)

Champlain College, as an educational institution that is both a consumer and producer of information, supports the College community's responsible and good faith exercise of fair use of copyrighted materials in pursuit of the College's educational mission. The College is committed to complying with laws protecting the rights of copyright holders, while recognizing that those rights are limited by fair use and other provisions of copyright law. The College provides information and resources to educate members of the College community about copyright law, the rights of copyright holders and the exercise of fair use. The faculty, staff and other College employees, the students of the College, and all members of the College community have an obligation to make informed and responsible decisions regarding their use of copyrighted materials and are obligated to comply with copyright law.

Information on Fair Use and Copyright

1. Introduction and Process

The purpose of this site is to provide general information and resources about copyright so you can make informed decisions about how to use copyrighted material of third parties. Compliance with copyright law and the good faith exercise of fair use is the responsibility of each of member of the college community.

An ad hoc committee of college staff and faculty originally created this site with the understanding that copyright is an area rich in information, complexities and change. The ad hoc committee will continue to meet periodically as a Copyright Advisory Committee, co-chaired by the Director of the Library and the Risk Management Director, to monitor developments in the field and update this site.

Process

The ad hoc committee suggests taking the following steps in regard to copyright use issues:

- Read this web site and related resources to increase your awareness of potential copyright use issues, even before they come up. Follow the guidelines for fair use analysis and make your own reasonable, good faith judgment. Obtain copyright permissions if needed.
- Talk to the library staff about reserves and use of library resources (but not fair use or copyright issues in general, since Champlain does not have a “copyright librarian”).
- Talk to eLearning about use of materials in online courses.
- If you face a situation that you feel uncertain about you should discuss it with your supervisor or Dean.
- You and your supervisor or Dean should check with the Risk Management Director for challenging or novel situations, or situations that may involve significant risk or liability exposure.
- The Risk Management Director may seek the advice of the Copyright Advisory Committee for particular matters.

2. Overview of copyright law

United States copyright law gives authors of original works (books, poetry, music, videos, etc.) a limited right to control how their works are used by others. These rights include the rights to reproduce, distribute or display their work. In general, you would need to obtain **permission** from the author to use (that is, reproduce, distribute or display) a copyrighted work. However, it is not always necessary to obtain permission. You may use the work (or perhaps a portion of it) without permission if the situation meets a **statutory exception**, including **fair use**, the **classroom exception**, or the **TEACH Act** (see below for more information).

Of course, not all work is protected by copyright. If the work is in the **public domain** or the copyright has **expired***, the work may be used without permission.

*Copyright for works created after January 1, 1978 lasts for the lifetime of the author plus 70 years. Works published before 1923 are now in the public domain. The rules are more complex for works published between 1923 and 1978. See <http://www.unc.edu/~unclng/public-d.htm> and the Resources below for more complete information.

Finally, you can provide access to the material without making a copy at all, such as through a **virtual course pack** or by simply **including a link** to the material in your online course.

3. How to use copyrighted material

- a. **Permission.** You may obtain written permission or a license from the copyright owner to use the work. Typically this is easily done through organizations like the Copyright Clearance Center (www.copyright.com) and Creative Commons (www.creativecommons.org). Another option is to purchase the work with distribution rights. For example, this is normally done when a college rents movies to show as entertainment to large groups of students.

You should keep in mind that Champlain may already have copyright permission for the material you seek. Champlain licenses over 60,000 electronic books and 27,000 full text journals in electronic format through the College Library's collections. A thorough search of these resources will produce chapters and/or articles relevant to almost any course offered within the College. Through these resources, faculty members can, in effect, produce a **virtual coursepack** -- not by copying articles or chapters, but simply by providing a list of relevant URLs to students so that they can access the material directly. Champlain College librarians can help instructors identify useful materials and format the URLs for easy access.

Before seeking copyright permission, Champlain faculty members should make every effort to locate suitable resources within the College's existing collections.

b. Statutory Exceptions

- i. **Fair use** is part of the copyright law that allows use of a copyrighted work under certain circumstances without permission. Fair use balances an author's rights with the social benefit of the dissemination of ideas.

Under the law, one must consider four factors to decide if a use is fair: The purpose of the use, the nature of the copyrighted work, the amount of the work used, and the effect of the use on the market.

These factors are intentionally broad so that they can be applied flexibly. The result, however, is that many situations fall into a gray area. *You must make a reasonable, good faith evaluation of each situation on a case-by-case basis.* Every situation is different, and fair use determinations are very fact-based. Note that an educational use is not sufficient by itself to pass the fair use test.

There are many good resources available that explain these four factors and how to apply them, so we have not recreated that information here. We recommend the University of Minnesota Libraries web site which includes a discussion of fair use and a Fair Use Analysis Tool (<http://www.lib.umn.edu/copyright/fairuse.phtml>). Other sites that discuss fair use are listed in the Resources section below.

There is no way to be assured that your evaluation of fair use is "correct" because every situation is unique. If the copyright owner decides to challenge you, the owner could bring a copyright infringement case and ask a court to make a determination about whether the use was a "fair use" under the law. The court would analyze the four factors described above, which is why it is important for you to carefully consider those factors. If you reasonably believe the use was a fair use after performing this analysis, a court will look upon your decision more favorably. It is a good practice to document your reasoning (such as by completing a **Fair Use Analysis** sheet and keeping a printout in your file).

If you believe a use qualifies as a fair use, you should still include proper attribution to the copyright owner. (However, remember that providing attribution alone does not make it a "fair use.")

- ii. The **classroom exception** allows the performance or display of a work by instructors or students in the course of face-to-face teaching activities of a nonprofit educational institution in a classroom or similar place devoted to

instruction (Title 17 section 110). See below for rules for online classes.

The terms of this statute can be open to interpretation (what is a classroom or similar place devoted to instruction?). If your particular use does not reasonably fit this specific exception, you may still meet the fair use test.

- iii. The Technology, Education and Copyright Harmonization Act of 2002 (also known as the **TEACH Act**) was written to address new issues in distance education. Since many of the TEACH Act provisions concern technology requirements that the college is still working on, faculty should rely on the other methods for use of copyrighted material in online courses (i.e. permission; virtual course packs; fair use) until the college is able to meet the technical requirements of the TEACH Act. At that time this site will be updated with detailed information about the TEACH Act.

c. **Other methods to access copyrighted material**

In addition to obtaining permission or meeting one of the statutory exceptions described above, there are other ways that you can obtain access to copyrighted material. Faculty may place original versions of books, articles or other media (legally obtained) on reserve with the library for student use. Copies of that material may also be placed on reserve if the fair use test is met. Below are specific policies and instructions from the library about the reserve process.

Another acceptable method for online courses is to include a link to the source of the material. Pointing students to a web site such as YouTube or a newspaper, or to our own library resources, is allowable because you are not making a copy.

Similarly, you could create a virtual course pack, as mentioned above, that includes links to external web sites or our library resources.

4. SUMMARY - ROADMAP

There are many options for copying, displaying or performing copyrighted material. But first, determine if the material is actually subject to the copyright laws:

- Is the work in the public domain?
- Has the copyright expired?

Ways to use copyrighted material without making a copy:

- Place the original material on reserve at the library.
- Incorporate links to the material in a “virtual coursepack.”
- For online courses, provide a link to the source of the material.

Ways to copy, display or perform copyrighted material:

- Obtain permission from the author.
- Use a copy for which performance rights have already been purchased.
- Meet the fair use requirements.
- Meet the requirements for face-to-face classroom use.
- Meet the TEACH Act requirements for online courses [not yet available].

Remember to include proper attribution to the copyright owner.

Copyright Resources

The University of Minnesota: <http://www.lib.umn.edu/copyright/checklist.phtml>

This link takes you right to the Fair Use Analysis Tool This site also contains a lot of information about fair use and other copyright topics.

Stanford University:

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/index.html

This site provides a comprehensive, up to date webpage of resources on fair use, including an excellent page on Academic and Educational Use:

http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter7/index.html

University of Texas: <http://copyright.lib.utexas.edu/>

A robust site that includes a “crash course in copyright” and a discussion of fair use and rules of thumb.

The United States Copyright Center: <http://www.copyright.gov/>

This is where it all happens. They provide useful explanations of copyright, FAQs, and link to the entire version of US Copyright or the individual chapters. A discussion of fair use is at <http://www.copyright.gov/fls/fl102.html> . The TEACH Act is discussed at

<http://www.copyright.gov/docs/regstat031301.html>

Taking the Mystery out of Copyright from the Library of Congress:

<http://www.loc.gov/teachers/copyrightmystery/>

A fun, simple explanation of copyright in video, especially the section on the “Fine Print.”

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

Founded in 1978, the Copyright Clearance Center provides content licensing services. If you are seeking permissions, CCC offers pay-as-you-go permissions. They also offer a number of helpful resources including guidelines for copyright in Learning Management Software such as Angel.

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

Creative Commons allows creators of content to license their material in a variety of ways. They offer a number of different types of licenses and also a database of material that holds their licenses. Their image collection on Flickr (<http://www.flickr.com/creativecommons/>) is especially useful particularly as it pertains to students' creative output. Creative Commons is an increasingly important resource, both as a licensing body and as a tool for our community.

Know your Copy Rights: <http://www.knowyourcopyrights.org/resourcesfac/fag/>

This educational initiative by the Association of Research Libraries includes a section on resources for teaching faculty.

The Meaning and Importance of the TEACH Act from the American Library Association:

<http://www.ala.org/Template.cfm?Section=distanced&Template=/ContentManagement/ContentDisplay.cfm&ContentID=25939> Thorough explanation of the requirements for the TEACH Act as well as outlines the responsibilities of administrators, libraries, and faculty.

Copyright Policy for Library Course Reserve Items (rev.10-23-09)

- 1) One chapter of a book may be placed on reserve at any one time. You must remove past chapters before a new chapter is placed on reserve.
- 2) One article from one journal may be placed on reserve at any one time. You cannot use multiple articles from the same journal. These items can be placed on reserve for one semester only.
- 3) A copy of the book may be placed on reserve. This book can be from the Library's collection or the teacher's personal book. **The library does not purchase textbooks to be placed on reserve.**
- 4) A purchased video tape, DVD, audio book, audio cassette, or CD may be placed on reserve. Library owned media may be placed on reserve. We cannot place a media item that has been copied from the original source on reserve without copyright permission.
- 5) We cannot put copies from a workbook or study guide on reserve. The workbook or study guide must be placed on reserve.
- 6) Coursepacks purchased through the college's bookstore may be placed on reserve. Coursepacks that have not been purchased through the bookstore will need copyright permission, before they are placed on reserve.
- 7) Student papers may be placed on reserve with the student's permission. The items must have a signed form from the student allowing the teacher to place the student's paper on reserve. The form must have a start and end date.
- 8) Student taped interviews may be placed on reserve with the student's permission. The items must have a signed form from the student allowing the teacher to place the student's taped interview on reserve. The form must have a start and end date.

Library Course Reserve Instructions (rev.10-23-09)

Faculty members may leave materials on reserve status in the Library for student use. **These materials will be for in-house use only and will not circulate outside the library.** Students wishing to use reserve materials must have their **Champlain College ID**. A student may check out **reserve items** at any given time the library is open for a **3 hour time period**.

Faculty members who wish to place materials on reserve status must bring the materials to Tammy Poquette, Manager of Circulation Services, at the Library located in the Miller Information Commons building. To ensure faster service, please make sure to fill out a reserve form located at the circulation desk.

Faculty may place their personal copies of books, audiotapes, CDs and videotapes on reserve. Materials from the Library collection may also be placed on reserve with the exception of Reference books.

Un-bound materials, such as photocopies, reports, and sample tests, may be placed on reserve in accordance with the following guidelines:

1. The faculty member should provide copies of the items to be placed on reserve. The number of items depends on the size of the class. For example, you may have as few as one or as many as four. This would be three for student use, and one to keep as a replacement copy.
2. All pages of all copies should have a **minimum 1" clear left margin** to allow for binding. Please try to **avoid** putting **double-sided** copies on reserve. Double-sided copies do not have a 1" margin on the left side of each page.
3. Each set of copies may be kept in a temporary binder and **stapled** to a folder. Additional items may be added to the binders at any time during the semester. **Make sure to send as many copies as you have binders or folders; this will ensure that there are identical sets of all items available.** When new items are added, they will be placed in the front of the binder.
4. Since **binding** and **stapling** will require putting holes in the items submitted, it is recommended that you **NOT** submit your original copy, unless holes will not be objectionable when the materials are returned.

We have had problems with reserve items being removed from the library. We will place a security strip, bar code, and labels on all items. Please let me know if you do not want your materials altered.

The course material will be placed on reserve status for one semester. At the end of each semester, all items will be taken off reserve status. All non-library materials will be returned to the appropriate instructors through campus mail.

Contact Person: Tammy Poquette Email: tpoquette@champlain.edu Phone: 865-6489