

Web Stewardship, Web Responsibilities

As a matter of policy, the University of Virginia expects all students, faculty, and staff to respect copyrights and to comply with other state and federal laws that establish web and digital responsibilities. These are important personal legal responsibilities. New technologies bring with them not only new possibilities, but also challenges that may not be intuitive or obvious. One way to understand these issues is to recognize that when you create a publicly accessible website or add content to one hosted elsewhere, **you are a publisher**. The same legal issues that are addressed routinely by publishers: copyright, permissions, releases, privacy, etc., **must** be considered by you as well.

This memorandum offers an overview of key legal issues but is **not** intended to offer specific legal advice to individuals. Copyright law is highly fact dependent; the answer to a particular question will typically require looking at the relevant legal principle in light of those specific facts. In exploring questions, you may find the many web resources listed in the *Copyright Resources Appendix*, attached to this memorandum, to be helpful. If you have specific concerns on these topics arising directly out of your responsibilities as a University of Virginia employee, you should contact the Office of General Counsel.

Copyright

Our digital world now allows copying and sharing of vast amounts of intellectual property (texts, images, photographs, drawings, graphs, multimedia works, media or sound files, software, etc.) But, unless the work is: (1) in the public domain¹; (2) created and owned by you; (3) being used with permission from the creator/copyright holder; or (4) exempted from the permission requirement under principles of “Fair Use” (more about this below); uploading such materials to the web may be an infringement of someone else’s copyright, **even if your intent is merely non-commercial and educational**.

Many students and faculty find this counter-intuitive, since higher education benefits so generously from the exceptions to the exclusive rights of copyright holders in the Copyright Act. For example, Section 110 (1) of the Copyright Act protects generous displays of educational

¹ As defined by noted copyright scholar Lolly Gasaway: “A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.”
<http://www.unc.edu/~uncInq/public-d.htm>

materials in **face-to-face teaching** without the need to obtain permission or pay fees to a copyright owner. Section 110 (2) allows delivery of many materials in support of distance learning initiatives. Section 107 of the Act allows delivery of print and digital course materials to students, without permission or payment of fees, as long as the amounts supplied are limited and other legal factors relating to course reserves are addressed. However, copyrighted materials that may be shown to students in the course of face-to-face teaching in a classroom and sometimes made available in a web-restricted, authenticated course reserves environment cannot simply be migrated to an open web environment without serious homework on your part. In short, the leap from the classroom or the scholarly workbench to the open web presents significant legal challenges.

Fair Use

U.S. copyright law provides an extremely important exception to the exclusive rights of a copyright holder in Section 107 “Fair Use.” This section of the Copyright Act states that “the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

Fair use is a case-by-case inquiry that requires balancing of the following four factors:

- **Purpose and character** of the use including whether the use is for educational versus commercial purposes.
- The **nature of the copyrighted work** – is it a factual or creative work?
- The **amount and substantiality** of the portion to be used in relation to the work as a whole.
- The **effect or impact** of the use upon the potential market for or value of the work.

Fair Use makes it reasonable in many cases to use short excerpts of text, music, video, or thumbnail images of photographs without getting permission. But each use must be carefully considered on its merits. Fair Use does not typically allow the posting of whole in-copyright works (such as a poem or song, or even a whole photographic image in high resolution format) without obtaining permission from the copyright owner. **In general, the greater the portion or amount of a work you want to copy and distribute, and the wider your audience will be, the less likely it is that you can rely on Fair Use alone.**

Therefore:

- Always consider whether it is appropriate to ask permission.
- Do not upload third-party content to a publicly accessible website without exacting consideration of the Fair Use standards. For help, consult the resources

listed under “Fair Use” and “Images, Film, Music, Multi-Media” in the *Copyright Resources Appendix*.

- If you found content you want to use on the web, sometimes the most practical strategy will be to link to the materials rather than copying and posting them yourself..

Contract/License

Faculty and students at the University of Virginia have access to licensed databases, maps, image collections, etc. through the University Library that carry explicit contractual restrictions limiting what can be done with the licensed materials. Thus, just because that content is available as a licensed resource to you as a community member doesn't mean it can be used in a publication or on a publicly-accessible website. Where materials have been harvested from one of the Library's licensed databases, you must investigate whether the materials can be displayed publicly under the license that has afforded you access in the first place. **Examine the database terms carefully.**

Another example of pre-existing contractual constraints is in the area of music performance rights. The University has performance rights to music through campus BMI and ASCAP licenses. Under those licenses, recordings of performances can be posted to University owned and operated websites. **However, the ASCAP and BMI campus licenses do not authorize posting performances to commercial or other third-party sites such as YouTube, iTunesU, Facebook, etc.** Again, when in doubt, check license terms!

Students & Intellectual Property

Under University policy, students own the intellectual property rights in their papers and projects unless their work is created with “significant University resources” (labs, high tech equipment, special funding, grants, etc.). A faculty member who intends, for educational purposes, to upload student essays or other work to a publicly-accessible website, should obtain clear written permission from the students to such use of their work. Typically, it should be clear that students retain the copyrights to their work, and are merely granting permission for web posting. Consider using a Creative Commons License to protect their (and your) work from misuse or misappropriation: For more information, see <http://creativecommons.org/>.

Faculty who require students themselves to engage in new media by uploading their course projects to websites such as YouTube, Facebook, Wikipedia, etc., must pay careful attention to the license language of the relevant sites. Such “click through” licenses will typically require a statement of copyright compliance and also impose indemnification requirements on the individual posting the work. Some sites will require that the students grant a non-exclusive copyright to the website owner of all work submitted. While today's students regularly interact with such sites, requiring web posting as a component of a course converts an individual and personal choice to a curricular requirement. It is important for you to be transparent about such course requirements and to educate students about legal responsibilities and copyright resources in these situations.

Student Rights & Privacy

The Family Education Rights and Policy Act (“FERPA”) prohibits sharing certain personally identifiable student information and records without permission from the student. For more on FERPA, see: <http://www.virginia.edu/registrar/privacy.html>. For this reason, students should give permission before you post their names or images in connection with their work in a public web environment. You should document that permission and keep a record of it.

If you are capturing **personally identifiable student participation** in a class through audio or video recording, you should obtain and document consent before posting that material to the web.

Releases

In general, uploading pictures of persons taken without their permission to the web or publishing them in other formats can create problems unless the individuals are in a public place, at a public meeting such as a political event, or the image does not focus in on the person clearly enough for them to be personally identified. If you intend to publish personally identifiable images of people taken in a non-public place, get a signed release. In the case of children (less than 18 years of age), gain written consent from a parent.

If you intend to record (audio or video) a lecture or other presentation, you should obtain written permission from the speaker(s). The consent should be as clear and broad as your potential use now or in the future. For example, obtaining consent to record a lecture for “campus research archives” is not enough to cover podcasting the lecture, or posting it to the public side of iTunesU, YouTube, or other public medium.

If you intend to publically post a recording and if it is likely to capture personally recognizable images or significant personally identifiable commentary from audience members, you should inform the audience of the recording process. For example, the announcement, invitation, or at a minimum, sign at the entrance to the event, should state clearly that the event will be recorded and that some audience participation and/or images may be captured in the recording process.

Blogging and Comment Posting

Can third parties add content to a website under your control? If so, you should think about setting responsible parameters for content that make clear your right to screen, edit, or reject any proffered content. Making this transparent up front will avoid disputes and arguments about “censorship” if you feel you need to take action after the fact. Feel free to tailor the generic text below to your particular project:

Example language:

“Purpose and Scope of this Blog: This shared blog has been created under the ownership and control of the ____ [faculty member, Department, University of Virginia] exclusively for postings by _____ students, faculty, staff, and invited guest scholars. Its purpose is to highlight research done in collaboration with the _____ project or relating to themes and issues relevant to _____. All submitted posts will be reviewed for content and relevancy before being published online, and the _____ reserves the right to request revisions or refuse to publish a given submission. Posts and comments will appear on this blog subject to the standards of responsible civil discourse and sound scholarship. In other words, the _____ has been established to further defined objectives of _____ and does not constitute a forum for general expression.

Remember, as the site owner you may be responsible for copyright infringement, defamation, invasion of privacy or other legal problems created by individuals whose materials you enable into a public web environment. That is why commercial websites such as Facebook, iTunesU, and YouTube make contributors sign carefully crafted legal agreements **before** allowing posting contents to their sites. Indeed, scholarly societies and other professional organizations also increasingly require a written affirmation of copyright compliance and indemnification prior to accepting conference presentations and other materials for web distribution.

**Who Is Responsible for the Site and/or the Content?
Example – iTunesU**

As a member of the University community, you may have access to a service such as iTunesU pursuant to a University contract. In such cases, you are responsible for ensuring that you are not causing the University to violate its agreement with Apple by uploading inappropriate content to the iTunesU site.

From the UVA-Apple agreement:

3. SPECIAL TERMS.

3.1 Uploading of Content to the iTunes U Site. University shall be responsible for uploading Content to the iTunes U Site and for obtaining all necessary third party permissions or licenses for uploading the Content to the extent University does not own the Content in question.

**5. REPRESENTATIONS AND WARRANTIES:
WARRANTY DISCLAIMER,**

5.1 Representations and Warranties. University represents and warrants that: (i) it has the full power and authority to enter into this Agreement and to grant Apple fee rights granted herein; (ii) it has complied and shall continue to comply with all legislation, rules and regulations regarding Content; and (iii) it will use secure methods to grant access to Private Content according to Section 1.7, where such methods are no less secure than the methods University typically uses to protect its own highly confidential data, and in any event no less secure than methods generally accepted and reasonably used in the field of higher education to protect highly confidential data. University further represents and warrants that to the best of its knowledge: (i) it is the sole owner of the Content or has been otherwise authorized by the owner of the Content to use the Content as contemplated herein, and has secured all necessary licenses, consents and authorizations with respect to use of Content and all elements thereof to the full extent contemplated herein; and (ii) no part of Content violates or infringes upon the patent rights, copyrights, trade secrets, trademarks or constitutes defamation, invasion of privacy, or the violation of any right of publicity or other rights of any person or entity.

The Level of Public Access is Just About Everything

As University students, faculty and staff interact with technology, it remains critically important to be thoughtful about these issues. Laws regulating copyright and privacy developed essentially in a world of print technology. These laws are catching up only slowly, and imperfectly, with a new world of digital duplication, distribution, and access.

Creating or adding content to a website involves choices about the type of access that will be allowed. Many of the issues discussed above are not a great concern where access is being restricted to students in a given class, academic colleagues, a professional (e.g. membership-based) society, or even sometimes the UVa community at large. However, the more open your access, the more you need to think about the copyright, privacy, and other legal issues that may apply!

**Madelyn Wessel
Associate General Counsel
University of Virginia - September, 2009**

Copyright Resources Appendix

General Copyright Resources and Information

- The United States Copyright Office:
<http://www.copyright.gov/circs/circ1.html>
- The University of Texas, Austin Copyright Crash Course
<http://copyright.lib.utexas.edu/>
- Association for Research Libraries (“ARL”)
<http://www.arl.org/sc/copyright/index.shtml>
- Columbia University Library Copyright Advisory Office: <http://copyright.columbia.edu/>
- Stanford University Libraries: http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/
- Website of the North Carolina State Libraries, Scholarly Communication Center
<http://www.lib.ncsu.edu/scc/main.html>
- University of Minnesota
<http://www.lib.umn.edu/copyright/>
<http://www.lib.umn.edu/copyright/checklist.phtml>
- University of Georgia
<http://www.usg.edu/copyright/>
- Catholic University - General Counsel’s website:
<http://counsel.cua.edu/copyright/resources/guidelines/>
- Center For Social Media – American University; white paper on copyright:
http://www.centerforsocialmedia.org/files/pdf/copyright_backgroundunder.pdf

Fair Use and Digital Rights

- Stanford:
<http://fairuse.stanford.edu/>
- Free Expression Policy Project at NYU Law School
<http://www.fepproject.org/policyreports/fairuseflyer.html>
- Berkman Center for Law and Society at Harvard Law School <http://cyber.law.harvard.edu/home/>
- Electronic Frontier Foundation <http://www.eff.org/>
- Center for Intellectual Property and Copyright in the Digital Environment:
<http://www.umuc.edu/distance/odell/cip/links.html>

Images, Film, Music, Multi-Media

- VRA's Copyright Resources and Image Calculator:
<http://www.vraweb.org/resources/ipr/copyright.html>
<http://www.vraweb.org/resources/ipr/dirc/index.html>
- Resources Library of the Center For Social Media – American University:
<http://www.centerforsocialmedia.org/resources/>
- Copyright Website of the Music Library Association:
<http://www.musiclibraryassoc.org/copyright/>
- March 2009 CLIR Report: “Copyright and Related Issues Relevant to Digital Preservation and Dissemination of Unpublished Pre-1972 Sound Recordings by Libraries and Archives”
<http://www.clir.org/pubs/reports/pub144/pub144.pdf>

Determining the Copyright Status of a Work:

- Two excellent resources to assess whether a work has passed into the public domain are posted at Cornell and UNC http://www.copyright.cornell.edu/public_domain/
<http://www.unc.edu/~unc1ng/public-d.htm>
- How to Investigate the Copyright Status and Potential Fair Use of a Work:
<http://www.copyright.gov/circs/circ22.html>;
http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter13/index.html
 - From the ALA, the Digital Copyright Slider: <http://librarycopyright.net/digitalslider/>
 - From the VRA, the Digital Image Rights Computator:
<http://www.vraweb.org/resources/ipr/dirc/index.html>
 - Copy Photography Computator: <http://www.vraweb.org/resources/ipr/computator/index.html>

Copyright Databases and Permissions Resources:

- US Copyright Office
<http://cocatalog.loc.gov/cgi-bin/Pwebrecon.cgi?DB=local&PAGE=First>
- Google: <http://booksearch.blogspot.com/2008/06/us-copyright-renewal-records-available.html>
- Stanford University's Copyright Renewal Database:
<http://collections.stanford.edu/copyrightrenewals/>
- The University of Texas at Austin's Harry Ransom Center FOB (Firms Out of Business) Database <http://tyler.hrc.utexas.edu/fob.cfm>
- The University of Texas at Austin's Harry Ransom Center WATCH (Writers, Artists, and their Copyright Holders) Database
<http://tyler.hrc.utexas.edu/>

- The Visual Arts and Galleries Association (VAGA)
<http://www.vaga.co.uk/>
- The Society of Authors
<http://www.societyofauthors.org/>
- University of Georgia,
http://www.usg.edu/copyright/additional_resources/collective_licensing_agencies1/#pictoral_graphic_sculptural_works

Sites Helping Scholars to Negotiate Rights:

- Association of Research Libraries SPARC Initiative: <http://www.arl.org/sparc/>
- Short ARL video on author's rights: <http://blip.tv/file/743274/>
- "Author's Rights, Tout de Suite" by Charles W. Bailey, Jr. <http://www.digital-scholarship.org/ts/authorrights.pdf>
- SHERPA/ROMEO website on publisher copyright policies and self-archiving:
<http://www.sherpa.ac.uk/romeo.php>
- Science Commons Scholar's Copyright Addendum Engine: <http://scholars.sciencecommons.org/>
- Columbia University Law School "Keep Your Copyrights" website:
<http://www.keepyourcopyrights.org/>
- Cornell University Library: <http://www.library.cornell.edu/scholarlycomm/>
- SURF <http://copyrighttoolbox.surf.nl/copyrighttoolbox/>
- Arizona State University, <http://www.asu.edu/lib/scholcomm/negotiation.htm>
- University of California, Berkeley,
http://www.lib.berkeley.edu/scholarlycommunication/manage_your_rights.html
- Georgia Tech: <http://www.library.gatech.edu/scholarlycommunication/copyright.html>
- University of Illinois at Chicago,
<http://www.uic.edu/depts/lib/projects/scholcomm/copyright.shtml>
- MIT: <http://info-libraries.mit.edu/scholarly/faculty-and-researchers/retaining-rights-increasing-the-impact-of-your-research/> and MIT's Author's addendum <http://info-libraries.mit.edu/scholarly/mit-copyright-amendment-form/>
- University of Minnesota, <http://www.lib.umn.edu/scholcom/au-rights.phtml> and their excellent seven minute training video: <https://umconnect.umn.edu/umauthorsrights/>
- University of Pennsylvania, http://www.library.upenn.edu/scholcomm/sc_author.html

- University of Tennessee, <http://www.lib.utk.edu/copyright/facultyrights.html>
- Washington University in St. Louis, Becker Medical Library, <http://becker.wustl.edu/guides/copyright.php#78>
- University of Wisconsin, http://oscp.library.wisc.edu/take_action.html#copyright
- *The UC System Open Access Site*: <http://osc.universityofcalifornia.edu/openaccesspolicy/>

Open Access and Author's Rights Articles:

- Publish and Perish? Protecting Your Copyrights from Your Publisher, Jonathan Band, <http://www.policybandwidth.com/doc/20080523-PublishANDPerishFinal.pdf>
- Copyright Issues in Open Access Research Journals - The Authors' Perspective, Esther Hoorn and Maurits van der Graaf; <http://www.dlib.org/dlib/february06/vandergraaf/02vandergraaf.html>

Sites Supporting Independent Distribution and Sharing:

- Creative Commons: <http://creativecommons.org/>
- Open Source: <http://www.opensource.org/>
- PubMed Central: <http://www.pubmedcentral.nih.gov/>
- Open Access Anthropology: <http://openaccessanthropology.org/>
- UMI ProQuest: http://www.proquest.com/products_umi/dissertations/epoa.shtml

Model Fair Use Guidelines by the University of Chicago Press

- <http://www.press.uchicago.edu/Misc/Chicago/permissions.html>

Zwolle Group Comparative Analysis of World Copyright Law: Issues for University Scholarship

- http://copyright.surf.nl/copyright/files/International_Comparative_Chart_Zwolle_III_rev071306.pdf

And A Book:

Permissions: A Survival Guide – Blunt Talk About Art as Intellectual Property Susan M. Bielstein, University of Chicago Press 2006