Using Copyrighted Materials in your Traditional Course

Questions? Contact Gretel Stock-Kupperman at glstock@viterbo.edu or 608-796-3272.

Basic Assumptions

- All items are legally made and acquired.
- All items are linked/posted on a password-protected Blackboard site for ONLY your class, are held at the library reserve desk, or follow Classroom Use guidelines.
- All items are part of the instructional activity of the course and not supplemental.
- Items are copyrighted; copyright is automatic, so when in doubt, assume it is copyrighted.

Assessing Materials for your Class

Guideline #1: Always assess if use of class materials falls under Fair Use or Classroom Use guidelines. If it does not, it is always wise to seek permission of the copyright holder.

Guideline #2: Linking to digital materials is always better than reposting, since you are more accurately crediting the original source. Non-linked sources must have copyright notices.

Guideline #3: The library subscribes to many print, multimedia and electronic sources that you can use in your course. Be sure to contact the library before licensing/purchasing additional content.

Item Types

Video, Audio, and Image—Copyright law allows “the performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution.” (17 U.S.C. § 110(1)). The entirety of any video work may be shown in the face-to-face classroom. Works owned by Viterbo may be streamed to the classroom or a learning lab, but not necessarily made available for evaluation for student homework.

Article or Book Chapter – If you have not used an item for this class in a previous semester, you may use the item. If you link to an existing electronic item in the library’s collection, you can usually use them for multiple semesters. Check with the library to verify if you can link to specific content.
Classroom Use

Copying by teachers must meet the tests of brevity and spontaneity:

- Brevity refers to how much of the work you can copy.
- Spontaneity refers to how many times you can copy.

Example of Fair Classroom Use: You find one article published in your most current disciplinary journal that provides new information on a topic, and you put it on your Blackboard course for students to read.

Not Fair Classroom Use: You use that same article again in a subsequent semester or have your students read the entire journal issue without seeking permission.

Fair Use Test

You must weigh four factors when deciding if the use of a work is fair use.

The purpose and character of the use:

- Is the new work merely a copy of the original? If it is simply a copy, it is not as likely to be considered fair use.
- Does the new work offer something above and beyond the original? Does it transform the original work in some way? If the work is altered significantly, used for another purpose, appeals to a different audience, it more likely to be considered fair use.
- Is the use of the copyrighted work for nonprofit or educational purposes? The use of copyrighted works for nonprofit or educational purposes is more likely to be considered fair use.

The nature of the copyrighted work:

- Is the copyrighted work a published or unpublished works? Unpublished works are less likely to be considered fair use.
- Is the copyrighted work out of print? If it is, it is more likely to be considered fair use.
- Is the work factual or artistic? The more a work tends toward artistic expression, the less likely it will be considered fair use.

The amount and substantiality of the portion used:

- The more you use, the less likely it will be considered fair use.
- Does the amount you use exceed a reasonable expectation? If it approaches 50 percent of the entire work, it is likely to be considered an unfair use of the copyrighted work.
- Is the particular portion used likely to adversely affect the author's economic gain? If you use the "heart" or "essence" of a work, it is less likely your use will be considered fair.

The effect of use on the potential market for the copyrighted work:

- The more the new work differs from the original, the less likely it will be considered an infringement.
- Does the work appeal to the same audience as the original? If the answer is yes, it will likely be considered an infringement.
- Does the new work contain anything original? If it does, it is more likely the use of the copyrighted material will be seen as fair use.

1 Modified from http://www.umuc.edu/library/copy.shtml