



# Manual of Policy and Procedures

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## I. PURPOSE

The purpose of this policy is to establish VSC-wide standards regarding the use and ownership of copyrighted materials at VSC. It is the intent of VSC to comply at all times with the United States Copyright Laws. The following policy statements are intended to assist members of the VSC community with their understanding of and compliance with the United States Copyright Laws.

Questions regarding the interpretation of this policy should be directed to the member college Library Director or the VSC Office of General Counsel.

## II. INTRODUCTION

### What is Copyright

Copyrights exist in all original works of authorship that are fixed in any tangible medium. Works of authorship include literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings, and architectural works.

Generally, works of authorship are protected by copyright regardless of whether they are publicly distributed or whether they include a copyright notice.

The owner of the copyright in a work has the exclusive rights to:

- i. Reproduce the work
- ii. Prepare derivative works of the work
- iii. Distribute copies of the work
- iv. Publicly perform the work
- v. Display the work

These exclusive rights, however, are not absolute. In appropriate circumstances, “fair use” may be made of a copyrighted work without the permission of the copyright owner.

### Fair Use

The “fair use” doctrine permits the use of copyrighted works without permission of the copyright owner in certain limited circumstances.

Generally, “fair use” allows uses for criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research based on analysis of the following four factors:

- i. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

Signed by: Robert G. Clarke <hr/> Chancellor
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- ii. The nature of the copyrighted work (i.e., whether it is mostly factual or mostly creative);
- iii. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- iv. The effect of the use upon the potential market for or value of the copyrighted work.

Whether a particular use constitutes “fair use” is a facts and circumstances test determined by weighing all of the four factors in each instance. One of the purposes of this policy is to provide general guidelines as to what constitutes the fair use of copyrighted works in classroom teaching, library reserve practices and distance teaching. Sections III through VI set out established standards by which fair use may be made of copyrighted works. In certain circumstances these standards may be exceeded, but VSC employees considering fair uses that do not fall within these standards should contact the Library Director.

### **III. FAIR USE IN THE CLASSROOM**

Copyrighted works identified on a course syllabus to be studied or reviewed by students shall be purchased by the students or used with permission of the copyright owner.

Copies may be made for faculty or classroom use without the permission of the copyright owner under the following guidelines. These guidelines describe the minimum portions that may be copied.

#### *Single Copies for Faculty Members*

A single copy may be made of any of the following by or for a faculty member at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- i. A chapter from a book
- ii. An article from a periodical or newspaper
- iii. A short story, short essay or short poem, whether or not from a collective work
- iv. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

#### *Multiple Copies for Classroom Use*

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the faculty member giving the course for classroom use or discussion provided that:

- i. The copying meets the tests of brevity and spontaneity as defined below; and
- ii. The copying meets the cumulative effect test as defined below; and
- iii. Each copy includes a notice of copyright.

#### A. Brevity:

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
- iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "i" above notwithstanding, such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

#### B. Spontaneity:

- i. The copying is at the instance and inspiration of the individual faculty member; and

- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
- C. Cumulative Effect:
- i. The copying of the material is for only one course in the school in which the copies are made.
  - ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
  - iii. There shall not be more than nine instances of such multiple copying for one course during one class term.
- (The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)
- D. Prohibitions:
- Notwithstanding any of the above, the following shall be prohibited:
- i. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
  - ii. There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
  - iii. Copying shall not:
    - 1. substitute for the purchase of books, publisher's reprints or periodicals;
    - 2. be directed by higher authority (i.e., the impetus for the use of the material comes from the faculty member); or
    - 3. be repeated with respect to the same item by the same teacher from term to term.
  - iv. No charge shall be made to the student beyond the actual cost of the photocopying.

#### **IV. FAIR USE FOR DISTANCE LEARNING**

The same guidelines that apply to the fair use of works in the classroom generally apply to online environments, with the exception that faculty members may not perform (i.e., transmit) entire dramatic literary or musical works and must limit their performance (transmission) of other works (images, other sound recordings, excerpts of dramatic literary or musical works) to "reasonable and limited portions".

Either the school or the faculty member must own a legal copy of the work a portion of which is transmitted.

The transmission of any works should include the copyright notice and provide notice that the making of any copy may violate copyright laws. The system used to transmit the works should limit access to enrolled students, contain measures that prohibit the further copying or transmission of the work and should discontinue access to the work at the end of the course.

#### **V. FAIR USE AND COURSEPACKS**

Coursepacks consist of compilations or anthologies of articles, book chapters or other works assembled for a particular course and provided to students. To the extent fair use in the classroom (Section III above) does not apply, each copyrighted work contained in a coursepack requires permission from the copyright owner or the payment of a royalty to a clearinghouse, such as the Copyright Clearance Center. It is the responsibility of faculty members assembling coursepacks to obtain all the necessary permissions or royalty payment arrangements.

#### **VI. FAIR USE FOR LIBRARY RESERVES**

*Photocopying Written Materials for Reserve Room Use*

VSC Libraries will make or accept photocopies of copyrighted material for reserve room use in accordance with the same guidelines applicable to fair use in the classroom as well as the following additional guidelines.

The number of reserve copies must be reasonable in relation to the number of students in the class and should generally not exceed six (6) copies. Copies of works put on reserve will be held on reserve for a single semester and should not be repeated for subsequent instances of the course in subsequent semesters. All copies should include the work's copyright notice.

Photocopies of an entire work may be placed on reserve only if:

- i. The work is "ordered/not received".
- ii. The work is out of print and cannot be obtained with reasonable effort.
- iii. The copy is accompanied by a completed copyright waiver.

#### *Placing Audio/Video Works, Images and Sound Recordings on Reserve*

Generally, the creation of copies of excerpts from an audio/video work, images from a book or periodical and excerpts from a sound recording to be placed on reserve to supplement other course materials will constitute fair use.

Copying an entire audio/visual work, image slides or an entire performable portion of a sound recording, where the original source is commercially available, is likely not to constitute fair use. In these instances, additional originals of the works should be purchased.

#### *Electronic Reserves*

Where electronic reserves are being used in place of traditional reserve systems for printed works, audio/visual works, images or sound recordings, the same guidelines listed above would still apply.

Additionally, the electronic reserves should be available through systems that limit the access only to students registered in the relevant course, prohibit further copying or distribution of the works and discontinue access to the works at the conclusion of the course.

### **VII. USE OF COPYRIGHTED MATERIAL ON VSC WEBSITES**

Any copyrighted materials used on websites owned, operated, maintained or administered by VSC and websites located on VSC host sites must have the permission of the copyright owner on file.

### **VIII. DIGITAL MILLENNIUM COPYRIGHT ACT**

VSC will comply with the Digital Millennium Copyright Act (the "DMCA") as it may apply to the transmission or storage of copyrighted works using VSC computer systems or networks. Under the DMCA, owners of copyrighted works that believe their works are being wrongfully displayed, stored or reproduced on a computer system or network can demand that the service provider controlling that system or network remove the work. VSC's compliance with the DMCA may include removing or disabling access to copyrighted works at the request of their owners.

### **IX. OWNERSHIP OF WORKS CREATED BY VSC EMPLOYEES**

Unless governed by a separate agreement (such as faculty bargaining agreements), the copyright of works created by employees within the scope of their employment, for use in their employment at VSC, or using VSC resources will be owned by VSC.