

# Copyright Policy for Blackboard

## I. Introduction

Vanderbilt both respects intellectual property law and promotes the generation of new knowledge and creativity in our campus community. This policy seeks to promote and respect the rights of students and faculty who provide course material and content to Blackboard as well as the rights of third-party producers whose content may be used in our teaching mission.

The aim of this policy is twofold: (1) to facilitate the teaching mission of Vanderbilt while (2) conforming with federal copyright law.

Copyright infringement violates university policy. As stated in [Vanderbilt's Policy on Acceptable Use of Information Technology](#), "unauthorized copying of copyrighted material" is prohibited and may be subject to civil and criminal penalties. See also the Vanderbilt [Statement of the Honor Code](#).

## II. Background

### A. Copyright Law

The copyright law of the United States ([17 USC](#)) governs the use of copyrighted materials, including materials used for teaching and research at nonprofit universities. The copyright law provides copyright holders with many rights, including protections against unauthorized reproductions, derivatives, performances and displays. However, there are also significant exceptions to these rights, including the right to make fair use of copyrighted materials in certain contexts ([17 USC §107](#)) as well as the right to perform and display materials in classrooms ([17 USC §110](#)).

### B. Licensing

The most straightforward way to avoid infringing copyrights is to license copyrighted materials. While a nonexclusive license need not be written in order to be valid, the duration and scope of the license should be recorded in writing to avoid any misunderstanding.

### C. Fair Use

The purpose of copyright law is to provide incentives for authors to advance the arts and sciences; it achieves this purpose by granting them temporary monopolies over their works. However, these monopolies are not absolute. Significant exceptions exist in order, for example, to prevent copyright from becoming a barrier to free expression and the open exchange of ideas, particularly in institutions of higher education.

The fair use limitation to copyright ([17 USC §107](#)) provides important exemptions in order to facilitate teaching and research. As the statute reads, “fair use of a copyrighted use ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” The statute then provides four factors to assist with determining whether a proposed (unlicensed) use of copyrighted material is, in fact, fair: (1) purpose of the use; (2) amount of the work used; (3) nature of the work; and (4) effect on the market for the work.

No “bright line” exists to separate fair uses from infringing uses. However, it may generally be assumed the first factor (“purpose of the use”) favors educational and scholarly uses. If the material at issue is factual or informational, then factor three (“nature”) may also weigh in favor of fair use. Faculty and students should evaluate the effect on the market—in other words, will the copyright holder lose actual or potential sales or royalties due to this use?—when considering the fourth factor. The amount of material that may be considered fair (i.e. the second factor) may depend on how strongly or weakly the other factors support the overall finding of fair use. A finding of fair use must be conducted on an individual or case-by-case basis.

### **III.Guidelines for Posting Materials to Blackboard**

#### **A. Public Domain**

Materials in the public domain may be used freely. Materials are in the public domain when published in the U.S. prior to 1923 or in other instances such as when a copyright renewal was not obtained. Creations move to the public domain after the term of copyright has expired, or when copyright is explicitly given up by the owner; mere lack of a copyright statement does not always imply that material is in the public domain.

#### **B. Copyright Holder**

Any Blackboard user who owns the copyright for materials may make them available without restriction, and may impose limits on further distribution. Note that if materials have been submitted for publication, copyright may have been transferred to the publisher. When students, faculty or staff make available their original materials to Blackboard, they grant a royalty-free non-exclusive license for those materials to be hosted on the third-party Blackboard platform. The scope of this non-exclusive license is limited to the registered users in the course and for the duration of the course section. Vanderbilt does not assert ownership of faculty materials above and beyond this narrow license. For more information about Vanderbilt’s policy on Technology, and Literary and Artistic Works, see the [Faculty Manual](#).

#### **C. Open Access**

Works available from identifiable sources in open access, such as open archives, open access journals, and digital materials available under [Creative Commons](#) (CC) licenses, from identifiable sources may be uploaded to Blackboard, providing proper attribution.

Users should insure that contact information is available for these sources in the event questions arise about their authority to grant such licenses.

Instructors looking for open access digital texts may search institutional repositories at various universities. Vanderbilt's institutional repository is [DiscoverArchive](#). Frequently, an institutional repository will contain a CC-licensed alternative of a digital text assigned for a course. For open access digital images, instructors should consult [Flickr](#) (be sure to limit searches to CC-licensed images), [Pixabay](#), and [Wikimedia Commons](#); it is also possible to search for CC-licensed images using Google by applying the appropriate filter for usage rights under "search tools."

#### **D. Materials Already Licensed to the University**

Vanderbilt licenses text, data, audio and visual materials for academic use. The library, for example, has purchased licenses for the use of many copyrighted works, including journals, newspapers, electronic books, and images accessible through the library catalog and databases. The terms of the licenses generally allow linking to resources, but not posting copies to Blackboard.

#### **E. Currently Unlicensed Copyrighted Materials**

Copyrighted material to which the university does not already have a license should not be made available in Blackboard unless (1) a license is obtained, or (2) one cannot reasonably be obtained and a fair use rationale has been produced for its use.

##### **1. Obtaining a License**

Copying and distributing unlicensed copyrighted materials through Blackboard may require obtaining the permission of the copyright owner, frequently including payment of a royalty. The [Copyright Clearance Service in the Library](#) can process permission requests, manage payments, and maintain records. These licenses typically allow distribution of copies only to students enrolled in specific course sections and only for the duration of the course. See [Placing Items on Reserve](#) for how library staff can assist in clearing copyright and posting materials to Blackboard. Licensing charges (plus a service fee) will be passed through to the relevant school or college.

##### **2. Fair Use**

If the University does not already have a license for the material and is unable to purchase one, (for example, when the transaction costs for arranging a license are too high or a license holder cannot easily be identified) users may consider relying on fair use when making materials available in Blackboard. Fair use decisions must be made on a case-by-case basis and should be documented each time material is made available. A fair use analysis should consider the following four factors: purpose of the use, nature of the work, amount of the work used, and the effect of the use on the market for the work. Use this [checklist](#) to document and maintain a record of fair use analysis.

Additionally, any digital files made available in Blackboard should not circumvent Digital Rights

Management (DRM) technologies apart from the [exceptions permitted by the Librarian of Congress](#). There should also be no contractual obligations—i.e. End User License Agreements (EULAs)—prohibiting educational uses of the digital files. Finally, copies of the digital files must have been lawfully obtained.

Access to course materials made available under fair use guidelines or under a course-specific license must be disabled at the conclusion of the course/semester.

A fair use analysis may not always conclude with a clear answer. The analysis may differ according to the kinds of digital media uploaded to Blackboard. This policy does not enumerate all the considerations that must be taken into account when conducting a fair use analysis. It does note, however, a few salient points of concern relevant to particular formats. These fair use guidelines have been informed by the [ARL \(Association of Research Libraries\) Code of Best Practices in Fair Use](#). For assistance in making fair use judgments and using the Fair Use checklist, contact members of the library staff.

#### **a) Literary Works and Musical Compositions**

Literary works include any work of authorship expressed in words or numbers whether fictional or nonfictional. Musical compositions include sheet music, scores, and other forms of written or fixed musical work. Unlicensed copyrighted works such as journal articles and musical scores may only be placed in Blackboard after proper fair use analysis.

#### **b) Pictorial Works**

Pictorial works include photographs, drawings, paintings, charts, graphics, maps and any other form of illustration. Unlicensed copyrighted pictorial works such as digitized art slides and images in PowerPoint presentations may be placed in Blackboard only after proper fair use analysis.

#### **c) Audiovisual Works**

Audiovisual works include movies, television episodes, screencasts and webcasts. Unlicensed audiovisual works such as feature films and educational documentaries may be placed to Blackboard only after proper fair use analysis. In general, fair use will only allow portions of audiovisual materials to be posted to Blackboard. Although there are exceptional cases, using entire films or other audiovisual productions is rarely considered fair use. In such cases, users should make available only limited portions or “clips” of the audiovisual work. The Blackboard video tool allows users privately to upload an entire audiovisual work, but make only limited portions publicly available to course members through its “clip” tool. Audiovisual works should be uploaded using My Media on Blackboard and not directly to a Blackboard folder, in order to prevent unauthorized downloading and reproduction.

Please consult your local Blackboard support provider for more information about how to use this tool.

#### **d) Sound Recordings**

Sound recordings include recorded performances in any form regardless of their delivery format. Unlicensed copyrighted sound recordings, such as podcasts, MP3s, WAV files, and RealMedia may be placed to Blackboard only after proper fair use analysis. In general, fair use will only allow portions of sound recordings to be posted to Blackboard. Although there are exceptional cases, uploading entire sound recordings may not be considered fair use.

Sound recordings should be uploaded to the Blackboard building block for streaming, and not directly to a Blackboard folder, in order to prevent unauthorized downloading and reproduction.

#### **F. Spontaneity**

Materials of direct relevance to a course that come to an instructor's attention close in time to a class session (e.g. within 24 hours) may usually be shared with students in the class, including through Blackboard. However, these materials should be removed, if possible, immediately after the class session, unless a license can be obtained for continued use. Such materials may remain available through Blackboard while the Copyright Clearance Service seeks a license.

### **IV.Help**

Questions about posting copyrighted materials to Blackboard may be directed to [blackboard@vanderbilt.edu](mailto:blackboard@vanderbilt.edu). Questions about copyright in general may be posed to the [scholarly communications](#) team in the library. Only the [Office of the General Counsel](#) is qualified to provide legal advice to members of the Vanderbilt community.