

Longwood University Faculty Senate  
**PROPOSAL/POLICY COVER  
SHEET**

This cover sheet is intended to provide information to members of the Faculty Senate about a new proposal/policy or about revisions to an existing proposal/policy. **If you are proposing a new policy, then attach the text of the policy to this form. If you are proposing a change to an existing policy, then attach the text of the current policy with any deleted language marked by a strikethrough and with new language marked by an underline. If you are deleting a policy, then attach the text of the policy to be deleted.**

**COMMITTEE(S)** that authored or sponsored this proposal:

**Faculty Library Advisory Committee**

**TOPIC:**

**Update/Revision of FPPM II.R, "Restrictions on the Use of Copyrighted Materials"**

**BACKGROUND** (Provide a brief statement describing the origins of this proposal, the nature of the problem it addresses, and the work completed to devise the proposal):

**The policy as it now appears in the FPPM is outdated and does not address common faculty concerns.**

**SUMMARY OF NEW POLICY OR PROPOSED CHANGES OR DELETIONS TO AN**

**EXISTING POLICY** (Provide a brief list or statement describing the content of the policy or the proposed changes or deletions):

**This proposal deletes the entire policy II.R, "Restrictions on the Use of Copyrighted Materials" and replaces with "Use of Copyrighted Materials in Instruction." It provides basic definitions and guidelines, addresses common faculty concerns, and directs faculty to contact liaison librarians with more complex questions.**

**RATIONALE FOR THE POLICY OR PROPOSED CHANGES** (Provide a brief statement as to why the new policy, the changes, or the deletion is needed):

**The current policy has not been updated in many years and includes outdated copyright information. The proposed revisions address common faculty concerns.**

**Routing information and signature lines:**

Date submitted to Senate Executive Committee for Consideration:

Action(s) Taken:

Date first read at Faculty Senate:  
Action(s) Taken:

Date final action taken by Faculty Senate:  
Action(s) Taken:  
Senate Chair: \_\_\_\_\_

Date submitted to the PVPAA (within 5 working days of Senate approval):  
Action(s) Taken:  
PVPAA: \_\_\_\_\_  
Date: \_\_\_\_\_

Date submitted to other administration:  
Action(s) Taken:  
Administrator: \_\_\_\_\_  
Date (within 15 working days of PVPAA's signature): \_\_\_\_\_

Date submitted to the Board of Visitors:

Coversheet updated 9/2017

## II. R. Use of Copyrighted Materials in Instruction

### Purpose:

The purpose of the policy is to provide options for use of materials in instruction such as investing in library licenses, applying Fair Use or the TEACH Act, using Open Access resources, or obtaining permission from the copyright holder. The librarians at Janet D. Greenwood Library can assist with applying these options.

### Definitions:

#### A. Copyright

A form of protection provided by the laws of the United States for "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations.

(Source: U.S. Copyright Office Definitions,

<https://www.copyright.gov/help/faq/definitions.html>)

#### B. Fair Use

Fair use is a legal doctrine that promotes freedom of expression by permitting the unlicensed use of copyright-protected works in certain circumstances. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, commentary, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. Consider the following four factors in evaluating a question of fair use:

1. Purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes
2. Nature of the copyrighted work
3. Amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. Effect of the use upon the potential market for or value of the copyrighted work

(Source: U.S. Copyright Office, Fair Use Index, <https://www.copyright.gov/fair-use/more-info.html>)

#### C. Open Access

Open access literature is defined as “digital, online, free of charge, and free of most copyright and licensing restrictions.” (Source: Creative Commons, Open Access,

<https://creativecommons.org/about/program-areas/open-access/>)

#### D. TEACH Act

The "Technology, Education and Copyright Harmonization Act" (the TEACH Act) redefines the terms and conditions on which accredited, nonprofit educational institutions throughout the U.S. may use copyright protected materials in distance education—including on websites and by other digital means--without permission from the copyright owner and without payment of royalties. The law calls on each educational institution to undertake numerous procedures and involve the active participation of many individuals.

(Source: American Library Association, TEACH Act,

<http://www.ala.org/advocacy/copyright/teachact>)

### Procedures:

Faculty should follow these guidelines for frequently used copyrighted materials:

## **A. Digital Resources**

### **1. Journal Articles & eBooks**

Faculty wishing to place content in the university's learning management system should follow this process to avoid copyright infringement:

- Check the library's collections for full text access to content (i.e., journal articles and e-books). Faculty can link directly to these resources in the learning management system.
- Search for open access materials that are in the public domain or who are licensed using a Creative Commons license. Instructors can contact their liaison librarian for assistance.
- If neither of these options is available, apply the Fair Use test (see Definition above).
- If Fair Use does not apply, seek the copyright holder's permission to use the content.

### **2. Streaming Media**

While U.S. Copyright law does provide limitations on exclusive rights, such as the ability of instructors to show motion pictures or other audiovisual work, these rights are often limited to face-to-face teaching activities. The TEACH Act has made provisions for online learning, but they tend to be more limited in scope. It covers works an instructor would show or play during class such as movie or music clips, but not materials a student would be expected to listen to or watch on their own time outside of class. Instructors will have to rely on other rights to post those materials, such as the fair use statute, or using licensed streaming media.

Instructors should contact their liaison librarian for questions about accessing licensed media through library subscription resources or one-time purchases, if feasible. Librarians can also give guidance on the TEACH Act and Fair Use.

### **3. Electronic Course Reserves**

Electronic reserves can be made available online through the library catalog. The Library will scan materials to PDF format. A completed [Reserve Request Form](#) is required for each reserve item; acknowledgement of copyright compliance is included as part of the request form.

## **B. Print Resources**

### **1. Copying for Classroom Use**

- a. **Single** copies may be made of any of the following to use in teaching:
- b. One chapter from a book; an article from a periodical, journal, or newspaper; a short story, short essay, or short poem, whether or not from a collective work; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper. **Multiple** copies (one copy per student in a course) may be made for use in teaching if:

The copying meets the test of brevity: Either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or

10 percent of the work, whichever is greater. Each copy includes a notice of copyright. (Source: U.S. Copyright Office, Circular 21, 2014, <https://www.copyright.gov/circs/circ21.pdf>).

**2. Print Course Reserves**

Faculty may place personal and/or library-owned materials on reserve for their students. A completed [Reserve Request Form](#) is required for each reserve item; acknowledgement of copyright compliance is included as part of the request form.

**3. Printed Course Packs**

Contact the bookstore.

## ~~R. RESTRICTIONS ON THE USE OF COPYRIGHTED MATERIAL~~

### ~~Guidelines for Legal Classroom Use of Copyrighted Materials in Not-for-Profit Institutions~~

*~~Note: Copies of materials relating to the legal use of copyrighted materials and information on how to receive permission for use from the copyright holder are on file in the Reserve Section of the Longwood Library.~~*

#### ~~Course Packs~~

~~POLICY:~~ Faculty who want "course packs" to be printed and sold to student must submit the course pack materials to the bookstore to obtain copyright clearance and have the materials duplicated in the University print shop and sold through the University bookstore.

~~PURPOSE:~~ To ensure all copyright and revenue collection issues are handled in accordance with University policies.

#### ~~PROCEDURES:~~

- ~~● Professors requiring course packs take materials to bookstore where copyright clearance will be obtained.~~
- ~~● Bookstore will deliver materials to print shop for printing.~~
- ~~● Print shop returns materials to bookstore for sales to students.~~
- ~~● Print shop bills bookstore for printing materials.~~
- ~~● Bookstore prices course packs to recover printing and cost of copyright search.~~

#### ~~BOOKS AND PERIODICALS:~~

- ~~1. Single copying for teachers~~—A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:
  - ~~a. A chapter from a book;~~
  - ~~b. An article from a periodical or newspaper;~~
  - ~~c. A short story, a short essay or short poem; whether or not from a collective work;~~
  - ~~d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.~~
- ~~2. 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 teacher giving the course for classroom use or discussion; provided that:
  - ~~a. The copying meets the tests of brevity and spontaneity as defined below; and,~~

~~b. Meets the cumulative effect test as defined below; and,~~

~~e. Each copy includes a notice of copyright.~~

### ~~3. Definitions.~~

~~a. **Brevity** (Each of the numerical limits stated in (1) and (2) below may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)~~

~~(1) Poetry: (a) A complete poem if less than 250 words or if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.~~

~~(2) 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.~~

~~(3) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.~~

~~(4) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended some times for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph (2) 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~~

~~(1) The copying is at the instance and inspiration of the individual teacher, and~~

~~(2) 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.~~

~~e. **Cumulative Effect** (The limitations stated in (2) and (3) below shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)~~

~~(1) The copying of the material is for only one course in the college in which the copies are made.~~

~~(2) 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.~~

~~(3) There shall not be more than nine instances of such multiple copying for one course during one class term.~~

~~4. Prohibitions as to 1 and 2 above~~ Notwithstanding any of the above, the following shall be prohibited:

- ~~a. 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 reproduced and used separately.~~
- ~~b. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.~~
- ~~e. Copying shall not:~~
  - ~~(1) substitute for purchase of books, publisher's reprints or periodicals;~~
  - ~~(2) be directed by higher authority;~~
  - ~~(3) be repeated with respect to the same item by the same teacher from term to term.~~
- ~~d. No charge shall be made to the student beyond the cost of the photocopying.~~

*Reference: Circular 21, Reproduction of Copyrighted Works by Educators and Librarians Copyright Office, Library of Congress, Washington, D.C. (no copyright).*

## MUSIC:

### 1. Permissible Uses

- ~~a. Emergency copying to replace purchased copies which for any reason are not available or an eminent performance provided purchased replacement copies shall be substituted in due course.~~
- ~~b. For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a section, movement, or aria, but in no case more than 10% of the whole work. The number of copies shall not exceed one copy per pupil.~~
- ~~e. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.~~
- ~~d. A single copy of recordings of performances by students may be made for evaluation and rehearsal purposes and may be retained by the educational institution or the individual teacher.~~
- ~~e. A single copy of a sound recording (such as tape, disc or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations~~



~~and may be retained by the educational institution or the individual teacher. (This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.)~~

## **2. Prohibitions**

- ~~a. Copying to create or replace or substitute for anthologies, compilations or collective works.~~
- ~~b. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets and like material.~~
- ~~c. Copying for the purpose of performance, except as in 1.a. above.~~
- ~~d. Copying for the purpose of substituting for the purchase of music, except as in 1.a. and 1.b. above.~~
- ~~e. Copying without inclusion of the copyright notice which appears on the printed copy.~~

~~Reference: Circular 21, Reproduction of Copyrighted Works by Educators and Librarians, Copyright Office, Library of Congress, Washington, D.C (no copyright)~~

## **VIDEOTAPES**

- ~~1. Copyrighted Videotapes — In classroom performance of a copyrighted videotape is permissible under the following conditions:~~
  - ~~a. The performance must be by instructors (including guest lecturers) or by pupils; and~~
  - ~~b. The performance is in connection with face to face teaching activities; and~~
  - ~~c. The entire audience is involved in the teaching activity; and~~
  - ~~d. The entire audience is in the same room or same general area; and~~
  - ~~e. The teaching activities are conducted by a non-profit educational institution; and~~
  - ~~f. The performance takes place in a classroom or similar place devoted to instruction, such as a school library, gym, auditorium, or workshop; and~~
  - ~~g. The videotape is lawfully made; the person responsible had no reason to believe that the videotape was unlawfully made.~~

~~Reference: "Library and Classroom Use of Copyrighted Videotapes and Computer Software," ALA, American Libraries, February 1986. (May be reprinted with credit)~~

## ~~2. Off Air Recording for Broadcast Programming~~

- ~~a. These guidelines were developed to apply only to off-air recording by non-profit educational institutions.~~
- ~~b. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.~~
- ~~c. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar retention period. "School days" are school session days not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions within the forty-five (45) calendar day retention period.~~
- ~~d. Off-air recordings may be made only at the request of, and used by, individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.~~
- ~~e. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all revisions governing the original recording.~~
- ~~f. After the first ten (10) consecutive school days, off-air recording may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.~~
- ~~g. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.~~
- ~~h. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.~~
- ~~i. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.~~

*Reference: Circular 21, Reproduction of Copyrighted Works by Educators and Librarians, Copyright Office, Library of Congress, Washington, D.C (no copyright)*

## COMPUTER SOFTWARE

Guidelines for classroom use of computer software:

- ~~1. License restrictions, if any, should be observed.~~
- ~~2. If only one program is owned under license, ordinarily it may only be used on one machine at a time.~~
- ~~3. Most licenses do not permit a single program to be loaded into a computer which can be accessed by several different terminals or into several computers for simultaneous use.~~
- ~~4. If the machine is capable of being used by a patron to make a copy of the program, a warning should be posted on the machine, such as: MANY COMPUTER PROGRAMS ARE PROTECTED BY COPYRIGHT. UNAUTHORIZED COPYING MAY BE PROHIBITED BY LAW.~~

~~Reference: "Library and Classroom Use of Copyrighted Videotapes and Computer Software," ALA, American Libraries, February 1986. (May be reprinted with credit)~~