

Copyright Usage Policy of Olivet Nazarene University

Table of Contents

Introduction	2
I. <u>Copyright Usage Policy</u>	
1. Definitions	3
2. Copyright Overview	3
3. Fair Use	4
4. Copyright and Libraries	4
5. Public Performance Law	6
6. TEACH Act	6
7. Technology	7
8. Course Packs	7
9. Photography	7
10. Requesting Permission	7
11. Summary of Copyright Infringement Penalties	8
II. <u>Additional Information</u>	
1. Policy Administration	9
2. General Resources	9
3. Contact Information	9
Appendix A <u>What Can and Cannot be Copyrighted</u>	10
Appendix B <u>Fair Use Checklist</u>	11
Appendix C <u>TEACH Act Compliance Checklist</u>	13
Appendix D <u>Sample Permission Letter</u>	14

Introduction

It is the policy of Olivet Nazarene University to adhere to the existing copyright laws of The United States of America and to maintain the highest possible ethical standard in our use of copyrighted materials for personal, instructional, and administrative purposes. Like the [Copyright Ownership Policy](#), which was adopted in May of 2012, this Copyright Usage Policy applies to University faculty, staff, and students.

The purpose of the Copyright Usage Policy is to:

- 1) inform the campus community of its rights and restrictions regarding copyright
- 2) promote and encourage adherence to current copyright laws
- 3) meet the requirements of various pieces of legislation including the Digital Millennium Copyright Act, the TEACH Act, and the Higher Education Opportunity Act.

It should be understood that this policy is not meant to be exhaustive in its scope. As such, certain questions may arise that cannot be answered by relying solely on this document. The United States Copyright Act, contained in Title 17 of the U.S. Code, is the ultimate source of copyright information along with associated case law. Although variation often exists regarding the interpretation of copyright laws, this policy states a sincere effort to operate within the appropriate legal and ethical boundaries.

Copyright violations can result in substantial legal penalties for the individual violator and/or the University. Under no circumstance is it necessary for employees or students of Olivet Nazarene University to violate copyright requirements in order to properly perform their duties.

I. Copyright Usage Policy

1. Definitions

Unless otherwise noted, as used in this policy, the following terms and their variant forms mean the following:

“Copyrighted Work” or “work(s)”: defined as any original work of authorship fixed in a tangible medium of expression.

“Library”: defined as Olivet Nazarene University’s Benner Library.

“University”: defined as Olivet Nazarene University.

“User(s)”: defined as any full or part time employee or student of Olivet Nazarene University who makes use of a copyrighted work.

2. Copyright Overview

Copyright Basics

A work possesses copyright the moment it is created. One does not need to register with the Copyright Clearance Center or include the © symbol for a work to have copyright protections. According to §102 of the U.S. Copyright Act, copyright exists for works that are “fixed in a tangible medium of expression.” Exceptions to this include works created by the U.S. Government. Government works exist in the public domain and are not copyrighted. A more complete list of what can or cannot be copyrighted is included in Appendix A.

Rights of a Copyright Owner

As found in §106 of the U.S. Copyright Act, except where limited by U.S. copyright law, the copyright owner has the exclusive rights to do and to authorize any of the following activities:

- 1) to reproduce the copyrighted work
- 2) to create derivative works based on the original copyrighted work
- 3) to distribute copies of the copyrighted work
- 4) to perform the copyrighted work publicly
- 5) to display the copyrighted work publicly
- 6) to perform the copyrighted work publicly by means of a digital audio transmission

First Sale Doctrine

According to §109 of the U.S. Copyright Act, owning a copy of a copyrighted work carries with it the rights to use *that particular work* but it does not give the copy’s owner the full rights of copyright outlined above. However, the purchaser of a lawfully made copy of a copyrighted work does have the right to transfer that copy so long as no additional copies are created in the process. Transfer of the lawfully made and acquired copy could include selling, lending, or giving away the copy.

3. Fair Use

Fair use is the legal right to copy a limited amount of a copyrighted work under certain conditions without undue harm to the owner. Contained in §107 of the U.S. Copyright Act, fair use is the broadest limitation on the exclusive rights of a copyright owner. For the user, fair use provides a legal way to use copyrighted material without obtaining permission. However, for *each* potential use, four unique factors must first be considered to determine whether fair use applies.

The four factors of fair use are:

- 1) Purpose – What is the work being used for?
- 2) Nature – Is the work published or unpublished? Is it fiction or non-fiction?
- 3) Amount – How much of the work is being used?
- 4) Effect – How might the use affect the market value for this work?

Using a copyrighted work for educational purposes does not automatically fall within fair use. No one factor on its own determines whether or not a use qualifies as fair use. All four factors must be thoughtfully weighed against each other. *For a more complete explanation of the four factors of fair use and to assist in the decision-making process, a fair use checklist has been included in Appendix B.* Employees and students are encouraged to use this checklist for every use of a copyrighted work that occurs without direct permission from the copyright owner. An additional tool that may be used on its own or in conjunction with the fair use checklist is the [Fair Use Evaluator](#), an online program that guides you through the evaluation process.

All records of fair use decisions should be retained in the event that future documentation is needed.

4. Copyright and Libraries

There has long been an intersection between copyright and libraries. As such, Benner Library has been the primary source of copyright information for the University. Copyright resources, including links to University policies and helpful websites, can be found on the [copyright page](#) of the library's website.

Copying

Section 108 of the U.S. Copyright Act provides certain exemptions for non-profit libraries and archives. Benner Library may—

Reproduce or distribute no more than one copy of a work provided each of the following conditions is met:

- 1) The work is not a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work.
- 2) The reproduction or distribution is made with no intention of commercial advantage.
- 3) The library is open to the public or available to outside researchers.
- 4) The reproduction or distribution includes a notice of copyright.

Reproduce up to three copies of a published work solely for the purpose of replacement if the original work is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete. The following conditions must be met:

- 1) The library, after a reasonable effort, has determined that an unused replacement cannot be obtained at a fair price.
- 2) Any reproduced copy in digital format is not made available to the public in that format outside the premises of the library.

Reproduce a copy for a patron of no more than one article or other contribution to a copyrighted collection or periodical issue or a copy of a small part of any other copyrighted work provided that:

- 1) The copy becomes the property of the patron and the library has no reason to believe that the copy will be used for anything other than private study, scholarship, or research.
- 2) The library prominently displays a warning of copyright on its order form and at the place where orders are accepted.

NOTE: The preceding allowance, including provisions, may also apply to the entire work if the library has determined after a reasonable investigation that a copy of the copyrighted work cannot be obtained at a fair price.

Neither Benner Library nor its employees are liable for any copyright infringement that may occur as a result of the unsupervised use of any scanners and copiers located on the library premises—provided that such equipment displays a notice indicating that any copying may be subject to copyright law.

Reserves

Library reserves operate within the legal parameters of the U.S. Copyright Act. An original copyrighted work can be placed on reserve so long as it is either owned by Benner Library or by the instructor making the request. Works owned by other libraries are not eligible for reserve.

When considering reserves for a specific article or a portion of a work, instructors must carefully consider all four factors of fair use. In consideration of the “effect” factor of fair use, library policy requires that photocopies on reserve should only be used for one course and for one semester before permission must be obtained from the copyright owner. Any use that exceeds one course or one semester, without permission, has been found to be outside the boundaries of fair use.

Faculty are strongly encouraged to utilize the numerous electronic databases to which Benner Library subscribes. Using persistent URLs (PURLs), faculty and students can link directly to any full-text article found within University-held databases. Since the University already owns the necessary licenses, accessing and linking to articles in this way does not require the permission of the copyright owner. For a more detailed explanation on how to use PURLs, please consult the [Building eResource Links](#) on the library website and listed with the supplementary resources at the end of this policy.

Interlibrary Loan

According to the Commission on New Technological Uses of Copyrighted Works (CONTU), Interlibrary Loan services are limited each calendar year to:

- 1) Requesting five articles from the current five years of a journal title.
- 2) Requesting two articles from an individual issue dated within the current five years.

Titles or issues older than five years are excluded from these guidelines. Additionally, if a request is made for a title which is owned by the requesting library but that title happens to be missing, on order, at the bindery, or not on the shelf for any other reason, that request does not count against the five-article limit.

All requests must state that the request conforms to the CONTU guidelines or other provisions of the U.S. Copyright Act. The onus of compliance falls on the requesting library. Libraries are required to maintain records of filled orders for three years after the end of the current calendar year.

5. Public Performance Law

The rental or purchase of a movie, or another dramatic work, does not carry with it the right to perform the work in a public setting. As such, it would be a violation of copyright if a personal copy of a movie or another dramatic work was shown to a large group as part of a University-sanctioned event. To ensure that these events can occur within the proper legal boundaries it is necessary to secure a public performance license. These licenses can be obtained on an individual basis from [Swank Motion Pictures](#).

An exception to the public performance law is made in §110(1) of the Copyright Act for performances in an educational setting, provided that all of the following qualifications are met:

- 1) The institution is a non-profit educational institution.
- 2) The performance or display occurs as part of face-to-face teaching activities.
- 3) The performance or display takes place in a classroom or similar place devoted to instruction, including a library.
- 4) The performance or display comes from a legitimately-made copy and the copy was not sold with any corresponding license or contract restricting educational performances.

6. TEACH Act

A further exception to the regulations on public performance is found in §110(2) of the Copyright Act. In 2002, the Technology, Education, and Copyright Harmonization (TEACH) Act was signed into law. This act greatly improved previous regulations—especially in terms of distance education. Some of the privileges that were previously only allowed in the course of “face-to-face” teaching were expanded to account for the rapid expansion of the online learning environment.

Compliance with the TEACH Act is not a mandatory obligation. However, in order to legally gain the benefits of the act, the University and the individual instructor must comply with a number of

specific requirements. A complete list of these requirements is included in Appendix C at the end of this policy.

7. Technology

Technology is not free from copyright implications. However, due to the rapid and varying nature of technological developments, this policy does not attempt to address all of the unique situations that may arise. For information pertaining to the use of technology, including specific details on issues such as file-sharing and the Digital Millennium Copyright Act, please consult the University's [Acceptable Use Policy](#).

8. Course Packs

Faculty and departments who wish to put together course packs need to give special consideration to copyright issues. When another person's work is included in a course pack—whether published or unpublished—specific written permission from the copyright owner is required. Course packs created without proper clearance from the copyright owner place the copying service, the University, and the individual instructor at risk for legal action. Responsibility for course packs ultimately lies with the faculty member and/or the academic department.

9. Photography

As photographs are “fixed in a tangible medium of expression” they carry with them all the rightful protections of copyright law. This includes all photos and graphics found on the Internet. University employees and students are expected to abide by current copyright law when using photographs for the purpose of business, teaching, marketing, and journalism. It is difficult to rely solely on fair use for the use of photographs or other works of art because the work itself is of a creative nature. Proper attribution is always encouraged for the use of photographs when ownership does not clearly reside with the user. However, this alone may not shield one from potential litigation if the use is deemed to be in violation of the exclusive rights of copyright ownership.

Additionally, as indicated in the University Life Handbook¹, “the University reserves the right to reprint or otherwise use for its own purposes photographs taken by any *Aurora* or *GlimmerGlass* staff/student photographer in any medium of the University's choosing.”

10. Requesting Permission

In the event that fair use or another copyright exemption cannot be applied to the copying or other use of a copyrighted work, permission must be obtained. It is the responsibility of the individual user to request and obtain the necessary permissions.

A formal request should be made in writing to the copyright owner and permission must be granted in writing. If mailed, in addition to the written request, the requester should also include a self-addressed, stamped envelope. If permission is granted on the condition of additional requirements

¹ *University Life Handbook, 2012-2013*. Bourbonnais, IL: Olivet Nazarene University, 2012.

being met (such as the payment of a monetary fee), it is the responsibility of the requestor to meet these requirements in order to obtain permission. A sample permission letter is included in Appendix D that illustrates what a request might look like for an instructor who wants to make copyrighted materials available to students within a course management system.

All communications involving copyright permission requests must be retained in the event that future documentation is needed.

11. Summary of Copyright Infringement Penalties

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (section 2 of this policy). These rights include the right to reproduce or distribute a copyrighted work. In the context of electronic file-sharing, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For complete details, see sections 504 and 505 of the Copyright Act.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

For more information, please see the website of the [U.S. Copyright Office](#).

II. Additional Information

1. Policy Administration

Oversight for this policy resides with the Office of the Vice President for Academic Affairs at Olivet Nazarene University. Any policy revisions shall be made with the approval of, or in conjunction with any request made by, the Vice President for Academic Affairs.

2. General Resources

The following resources provide additional information on the subject of copyright:

American Library Association. <http://www.ala.org/advocacy/copyright> Copyright Advisory Office, Columbia University.

<http://copyright.columbia.edu/copyright/copyright-in-general/copyright-quickguide/>

Copyright Clearance Center. <http://www.copyright.com/>

Creative Commons. <http://creativecommons.org/>

U.S. Copyright Act. <https://www.law.cornell.edu/uscode/text/17>

U.S. Copyright Office. <http://www.copyright.gov>

3. Contact Information

Please address any questions or comments about copyright, including this Copyright Usage Policy, to the following contacts:

Judson L. Strain, M.L.I.S., J.D.

Reference Librarian, Benner Library

Olivet Nazarene University

Phone: (815) 928-5438

Email: jlstrain@olivet.edu

Kyle Olney, M.S., M.A.

Access Services Librarian, Benner Library

Olivet Nazarene University

Phone: (815) 928-5490

Email: kolney1@olivet.edu

Appendix A

What Can and Cannot be Copyrighted

Can Be Copyrighted

- Written works
- Musical works
- Dramatic works
- Sound recordings
- Computer software
- Pantomimes and choreographic works
- Images and sculptures
- Motion pictures and other audiovisual works
- Architectural works

Cannot Be Copyrighted

- Ideas
- Facts
- Processes and procedures
- Systems
- Concepts
- Methods of operation
- Principles
- Discoveries
- Recipes
- U.S. Government Works

Appendix B

Fair Use Checklist

Used with permission from the Copyright Advisory Office of Columbia University, Kenneth D. Crews, Director (<http://copyright.columbia.edu>)

Name: _____
Institution: _____
Project: _____
Date: _____
Prepared by: _____

Purpose**Favoring Fair Use**

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit educational institution
- Criticism
- Comment
- News reporting
- Transformative or productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

Nature**Favoring Fair Use**

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

Amount**Favoring Fair Use**

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to or “heart of the work”

Effect**Favoring Fair Use**

- User owns lawfully purchased or acquired copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on the Web or in other public forum
- Repeated or long-term use

Appendix C

TEACH Act Compliance Checklist

For a copyrighted work to be used in a distance education setting, the institution and the instructor must comply with these TEACH Act requirements:

The Institution

1. We are an accredited nonprofit educational institution.
2. We have an institutional copyright use policy.
3. We have educational materials on copyright available to students, faculty, and staff.
4. We have informed students in courses that provide a digital online infrastructure that materials in them may be subject to copyright protection.
5. We have not interfered with technological measures used by copyright owners to prevent retention or dissemination of their works.
6. We use digital classroom systems that ordinarily are not accessible to anyone other than anticipated recipients.
7. We normally maintain copies of works in digital classroom systems for only the period that is reasonably necessary to facilitate the transmissions for which it was made.
8. We have taken technological measures to reasonably prevent student access of the work for longer than the class session and unauthorized further dissemination of the work in accessible form to others beyond the class.

The Instructor

1. I am instituting reasonable downstream controls on the work I want to use: I will not retain the work longer than the class session, will not disseminate it beyond the recipient, and will encourage my students not to disseminate it further either.
2. The (copyrighted) work I want to use is not a digital educational work (not marketed primarily for online classes) or a textbook, course pack, or other material in any media typically purchased by students.
3. The work I want to use is lawfully made and acquired.
4. The work I want to use is integral to the content of my class session.
5. The work I want to use will be a part of my systematic mediated instructional activities and under my supervision.
6. The work I want to use is directly related to and of material assistance to my teaching.
7. The work I want to perform is either a nondramatic literary work or a nondramatic musical work: I may perform all of it.
8. Any other work I want to perform, including dramatic works and audiovisual works: I may use only reasonable and limited portions.
9. I may display any work as long as the amount is in an amount analogous to what is typically displayed in a live classroom setting.
10. The work I want to use will be limited to students enrolled in the course.
11. If the work I want to use needs to be converted from analog to digital, I can do so if no digital version is available to the institution, or if there is a digital version available, it is technologically protected.
12. I have placed a copyright warning notice on the work I want to use with students.

Appendix D

Sample Permission Letter*

[Date]

Materials Permission Department
[Publisher's Name]
123 Main Street
New York, NY 10012

To whom it may concern:

I am requesting your permission to duplicate the following article/chapter and to include it within my university's course management system. All such electronic files exist behind a firewall and are available only for Olivet students enrolled in the particular course. I have [x] sections of [class code] called "[Name of Class]" in our [degree] program for which I would like to use this material starting in [month, year], for [x] semesters. Classes average between [#] and [#] students.

Article/Chapter Title:
Author:
Periodical/Book Title:
Issue:
Pages:

Please send a letter of permission to me at the address below along with any further requirements you may have. Thank you for your consideration.

Sincerely,

[Instructor's Name]
[Department]
Olivet Nazarene University
One University Avenue
Bourbonnais, Illinois 60914

**Disclaimer: This letter is only meant to be an example of what such a request might look like. Specific content should be adjusted as necessary based on the individual situation.*