



## Copyright Compliance Policy

The purpose of the Valley College (VC) Copyright Compliance Policy is to provide a summary of U.S. copyright law as it relates to Valley College. This policy attempts to provide practical advice and procedures on copyright-related matters. It is not a substitute for legal advice, and proper legal advice should be obtained when necessary. The Campus Director/Vice President, Education and Online Division will serve as the Valley College Copyright Officer and will assist students in these matters.

### **Library and Classroom: Use of text-based copyright-protected works in the classroom and Resource Center**

#### What is copyright?

Copyright is an area of law that provides creators and distributors of creative works with an incentive to share their works by granting them the right to be compensated when others use those works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). If you are not a copyright holder for a particular work, as determined by the law, you must ordinarily obtain copyright permission prior to reusing or reproducing that work. However, there are some specific exceptions in the Copyright Act for certain academic uses, and permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection.

#### What is protected by copyright?

The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship", including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across—including books, magazines, journals, newsletters, maps, charts, photographs, graphic materials, and other printed materials; unpublished materials, such as analysts' and consultants' reports; and non-print materials, including electronic content, computer programs and other software, sound recordings, motion pictures, video files, sculptures, and other artistic works—is almost certainly protected by copyright. Among the exclusive rights granted to those "authors" are the rights to reproduce, distribute, publicly perform and publicly display their works.

These rights provide copyright holders control over the use of their creations and an ability to benefit, monetarily and otherwise, from the use of their works. Copyright also protects the right to "make a derivative work," such as a movie from a book; the right to include a work in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for "authors" of certain works of visual art. Copyright law does not protect ideas, data or facts.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years. For more information on copyright duration, visit <https://www.copyright.gov/help/faq/faq-duration.html>

## **FAIR USE:**

A provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work is likely to be considered fair if it is used for one of the following purposes: criticism, comment, news reporting, teaching, scholarship and research. If the reproduction is for one of these purposes, a determination as to whether the reproduction is fair use must be made based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the use being evaluated upon the potential market for or value of the copyright-protected work.

Fair use is an ambiguous concept and the law does not state exactly what uses of a copyrighted work will be considered fair uses under the law and may therefore be used without obtaining permission. As such, individuals who are not lawyers may often need to be interpreters of the law in everyday circumstances, and answers as to how much reproduction may be considered fair use often remain unclear. The bottom line is that fair use requires a very circumstance-specific analysis as to whether a particular use or reuse of a work may indeed be considered fair use.

To avoid confusion and minimize the risk of copyright infringement, Valley College interprets the following situations as fair use:

- Quotation of short passages in a scholarly or technical work for illustration or clarification of the author's observations.
- Reproduction of material for classroom use where the reproduction is unexpected and spontaneous – for example, where an article in the morning's paper is directly relevant to that day's class topic. This would generally cover one time use in only one semester.
- Use in a parody of short portions of the work itself.
- A summary of an address or article, which may include quotations of short passages of the copyright-protected work.

If your use does not meet the above criteria and the work is protected by copyright, you probably need to obtain permission to use the work from the copyright holder or its agent.

## **TYPES OF USE:**

### Classroom Handouts

Based on Valley College's fair use analysis, classroom handouts fall into two categories; one that requires permission and one that does not. If the handout is a new work for which you could not reasonably be expected to obtain permission in a timely manner and the decision to use the work was spontaneous, you may use that work without obtaining permission. However, if the handout is planned in advance, repeated from semester to semester, or involves works that have existed long enough that one could reasonably be expected to obtain copyright permission in advance; you must obtain copyright permission to use the work.

### Photocopying

It is permissible for a faculty and/or staff member to photocopy copyright-protected works at Valley College without obtaining permission from the copyright owner, under the following circumstances:

**The user requests for articles and short excerpts.** At the request of the user, Valley College may make one reproduction of an article from a periodical or a small part of any other work. The reproduction must become the property of the user, and Valley College must have no reason to believe that the reproduction will be used for purposes other than private study, scholarship and research. As recommended by Section 108 of the Copyright Act, Valley College must display the register's notice at the photocopier that briefly outlines the copyright responsibilities. If a faculty or staff member has a question regarding what they can copy, they should talk to the Campus Director.

#### Photocopying by Students

Students must ask for permission from a faculty member to make any photocopies at Valley College. Photocopying by students is subject to a fair use analysis as well. A single photocopy of a portion of a copyright-protected work, such as a copy of an article from a scientific journal made for research, is permissible. Photocopying **all the assignments** from a book recommended for purchase by the instructor, **making multiple copies of articles or book chapters for distribution to classmates**, or **copying material from consumable workbooks**, all require permission.

#### Distance Education and Course Management Systems

In 2002, the Technology, Education and Copyright Harmonization (TEACH) Act became law and expanded the latitude universities, including Valley College, have for the performance and display of copyright-protected materials in a distance education environment, including through the use of Course Management Systems (CMS).

The copyright requirements for TEACH and CMS postings are similar to those of classroom handouts, but extend the traditional rules for those handouts to the digital transmission of materials to distance education students. If the use is spontaneous and will not be repeated, copyright permission is not required; however, the content may not remain posted for extended periods of time. If the use is planned, repeated or involves works that have existed long enough that one could reasonably expect to receive a response to a request for copyright permission, you must obtain copyright permission. **Instructors who use the materials provided by publishers must read, accept and abide with the license agreements prior to using the material as described in the license.** To prevent copyright infringement, instructors should direct the students to Student Online Learning Centers to view student-related material such as PowerPoint presentations. Electronic lectures posted in online folders should be instructor's original works and be created during the time the course is being taught to ensure that it is spontaneous in nature.

#### **PENALTIES and FINES - Copyright Infringement**

Copyright infringement is a serious offense and can include costly penalties. Copyright owners can seek "statutory damages" of as much as \$30,000 for each work and those committing the infringement can be held responsible for court costs and attorneys' fees. If the infringer acted "willfully," with knowledge of infringement, the damages may rise to \$150,000 for each work and the infringer may face criminal charges. The law does however; try to protect the educator or librarian in an academic community who acts in good faith. If an infringer can prove that he/she took reasonable steps in following copyright laws and guidelines, the court must reduce the statutory damages, which can be the most costly part of the penalties

#### **HOW TO OBTAIN COPYRIGHT PERMISSION**

Permission to use copyright-protected materials, when required, should be obtained prior to using those materials. It is best to obtain permission in writing (including e-mail) and to ensure that the Campus Director has a copy of each permission form or letter. The time to obtain permission may vary and, where possible, it is recommended to start the permissions procedure at least six months prior to the time that you wish to use the materials. If you need a quicker permission, let the copyright owner know this and he/she may be able to get back to you more quickly.

Once you have identified the materials you want to use and determined that copyright permission is required, you must locate the copyright holder. If the copyright holder is not listed on the work, locating the appropriate person or entity to grant permission may take some investigative and creative work. The Copyright Office of the Library of Congress ([www.loc.gov](http://www.loc.gov)) may be of assistance in locating a copyright owner if the work is registered. Copyright Clearance Center ([www.copyright.com](http://www.copyright.com)) may also assist you in obtaining copyright permission. Check with the Campus Director to see if Valley College has an account with Copyright Clearance Center.

#### Information in your Permission Request

The copyright holder or its agent will require the following information in order to provide you with permission:

- Title of the material
- Creator/author of the material
- Publisher of the material
- Description of material
- ISBN or ISSN, if applicable
- Date of publication, if applicable
- Purpose for which you wish to reproduce the item (research, commercial, educational, etc.)
- How the material is to be reproduced (e.g., photocopied, digitized)
- Where the reproduced material will be used or will appear and for how long

#### **COMPUTER SOFTWARE:**

Valley College purchases enough licenses to assure that the appropriate software (operating system, virus scan ware, and application suite software) used at Valley College has been legally purchased and is registered. Valley College periodically checks the software loaded on the PCs in the classroom and in staff offices to be certain that only the appropriate software is loaded on the computers. Valley College staff will not install software on any computer, or copy any software that was used on a computer / device that is being discarded, to a replacement computer or device, without tangible proof of right to use the software on that computer. Valley College reinforces the software agreements and license requirements for software applications that is associated with textbook specific software applications. Valley College recognizes that from time to time, faculty and staff members will need to download software from the Internet to perform their jobs. Faculty and staff members will need to read, register and abide by any licenses agreements.

Students are prohibited from downloading any software programs on the computers in Valley College computer labs, classrooms and Resource Center that are not required for their courses. The instructor will follow the proper protocol for downloading software on students' computers. Valley College follows license requirements when distributing course-related software to students. Online students are provided with a Microsoft application software plan while they are current students. Download directions are provided to the student prior to his/her first class. Due to software license restrictions, the Microsoft Office software plan is only valid for current students. If a student separates from the college due to graduation or withdrawal, the College must deactivate the student's Microsoft Office application software plan.

Music, movies, video games, photographs and computer software that are not an approved part of the curriculum may not be downloaded or uploaded on computers (or other electronic equipment) at Valley College. Valley College prohibits **faculty, staff and students** from any unauthorized downloading and uploading of copyright-protected material such as music, movies, video games, computer software and photographs while using Valley College computers or other electronic equipment.

## **PENALTIES and FINES - SOFTWARE**

According to the U.S. Copyright Law, illegal reproduction of software can be subject to civil damages of as much as \$50,000 or more and criminal penalties including fines and imprisonment.

## **PEER –To-PEER FILE SHARING**

On December 16, 1997 Public Law 105-147, the No Electronic Theft Act (NET), was signed into law by President Clinton, making the reproduction and distribution of copyrighted intellectual property, including MP3 files, a **criminal** offense. It used to be only a civil offense (you could be sued) unless you expected to receive some financial gain (making it criminal). For example, it was criminal if you were trying to sell the copyrighted work. NET changed that by redefining financial gain to also include the expectation of receiving copyrighted material.

Most people engage in peer-to-peer file sharing with the expectation of receiving copyrighted material such as music files. Most peer-to-peer file sharing programs automatically share back to the Internet any file a person downloads. These programs continue to share those files even though the person may not be aware they are running a file-sharing program. This puts users of peer-to-peer file sharing in **criminal** violation of the law from the first moment they download a copyrighted file.

Valley College prohibits staff, faculty, and students from downloading file sharing software on computers. Music is not part of the curriculum therefore there is no need for anyone; student, faculty or staff to download music files while at Valley College. If a file sharing software is found to be on a Valley College computer, it will be removed.

Valley College has elected to accept and respond to digital Millennium Copyright Act (DMCA) Notices as its technology-based deterrent. The Campus Directors will serve as the person who will receive DMCA notices. Valley College does not serve as an ISP for our students or employees. It also is not a residential college, so that the students' time at the college should be focused on meeting the demands of the curriculum and not on downloading copyright material. If Valley College's Director of Information Technology (IT) is notified that the College has received a DMCA notice, she/he will take the appropriate action. This action will be in accordance to the requirements of the compliance regulations and Valley College policies which may include counseling, lost of Internet privileges or suspension/termination. Valley College staff and faculty are also responsible to monitor the student and staff/faculty computers to assure that P2P software is not loaded on the computers in the labs or offices and that any copyright material falls within the Fair Use designation or has been obtained legally. The College will upon request assist the student/staff/faculty in finding legal alternative for downloading or otherwise acquiring copyrighted material and will make the results of the review available to students through a web site or other means.

## **PENALTIES and FINES - PEER –To-PEER FILE SHARING**

Because the act is criminal rather than just civil, anyone can cause action to be brought against the violator, not just the copyright owner. The penalty is up to 3 years in prison and \$250,000 in fines for a first offense.

## **CONTENT USE FOR BUSINESS PURPOSES**

On campus, copyright compliance naturally focuses on the use of content for educational purposes. Yet in the normal course of daily operations, there are many instances where educational guidelines do not apply. Consider, for example, a staff member who copies a trade magazine article to share with colleagues, a marketing person who copies press articles for use in public relations or recruiting, or a faculty member who uses third-party materials in a non-academic presentation or speaking opportunity. In these cases, the fair use

analysis will usually produce a different result from an educational (classroom-related) use and each user would need to obtain copyright permission from the copyright holder or its agent.

For information about copyright compliance for business purposes, please refer to Copyright Clearance Center's *Guide to Copyright Compliance for Business Professionals*.

## **THE USE OF STUDENT-CREATED MATERIALS**

The use of student-created materials by an institution or its faculty requires permission from the copyright holder—the student. Usage requiring consent includes the posting of student materials in a public location such as the Internet or a campus art gallery. Public posting of this nature may also be subject to state and/or federal privacy laws, as well as the academic institution's own student-protection policies. An example of an applicable federal statute is the Family Educational Rights and Privacy Act; many states and universities have built their own, sometimes more restrictive policies on top of the federal law.

## **REPORTING SUSPECTED INFRINGEMENTS**

**DISCIPLINARY ACTION:** Employees and students, who suspect that anyone at Valley College is using any copyright-protected material without the permission of the copyright holder, should immediately report this to the campus Director. There will be no retaliation against applicants, students or employees for reporting or assisting Valley College in the investigation of a complaint. The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding, and both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding. This notification of outcome does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). The outcome of a disciplinary proceeding means only the institution's final determination. Where investigations confirm the allegations, appropriate corrective action will be taken. Such conduct may result in disciplinary action up to and including dismissal.

## **REVIEW AND INTERPRETATION OF POLICY**

This Policy will be reviewed than annually, and updated if necessary. The dated is recorded in the footer For more information, please see the web site of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov), and their FAQ's at [www.copyright.gov/help/faq](http://www.copyright.gov/help/faq).