

Recommending Committee:  
Policy: Communications/Copyright Policy

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## **Copyright Policy**

### **Overview & Purpose**

University of Rio Grande & Rio Grande Community College's copyright policy is based upon **United States Copyright Law, Title 17, U.S. Code, 1976**. The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted material. Our policy is based on careful review of the law itself, the **Fair Use of Guidelines of 1997**, the **TEACH Act of 2002**, the **Digital Millennium Copyright Act**, and the **DMCA exemptions of 2006**.

This Copyright Policy has been prepared in an effort to help the University community better understand what is allowable by law, and why some services that are technically possible may nevertheless be restricted. The University of Rio Grande & Rio Grande Community College will always remain open to receiving any new information on or interpretation of copyright law.

### **Scope**

This policy applies to all members of the University of Rio Grande & Rio Grande Community College, including faculty, staff, students, alumni, and any other person who has access to information technology resources at the University.

Copyright law protects original works of authorship fixed in any tangible medium. The University of Rio Grande & Rio Grande Community College upholds the principle that faculty retain copyright ownership for traditional works that they have created, including books, films, music, and other works of art. The University of California's policies on **Copyright Ownership** and **Ownership of Course Materials** clarify who owns the copyright to original works when produced by members of the faculty. There are occasions, however, when a work produced by an employee may fall under a "**work made for hire**" as defined in section 101 of the 1976 Copyright Act. In these instances, copyright ownership would be ascribed to the institution.

### **Responsibilities**

Compliance with the federal copyright law and with this policy is the

responsibility of every member of the University of Rio Grande & Rio Grande Community College, including faculty, staff and students. An up-to-date policy is posted on Rio Grande's website and all members of the academic community are expected to take a personal interest in becoming informed about how copyright law affects our work at the University of Rio Grande & Rio Grande Community College.

## **General Provisions**

It is the intent of the University of Rio Grande & Rio Grande Community College to adhere to the provisions of state and federal copyright laws as described above. The following tenants represent a sincere effort to comply with those laws

- A. The ethical and practical problems caused by illegal copying should be included in the University's in-service and faculty development programs.
- B. Only legal copies of copyrighted materials may be made or used on University equipment.
- C. The University of Rio Grande & Rio Grande Community College does not give permission for any illegal copying of University owned copyrighted materials.
- D. No student shall be advised that they may copy protected materials other than those allowed by the guidelines defined by copyright law and in this policy.
- E. It shall be the policy of the University of Rio Grande & Rio Grande Community College to negotiate for specific copyright releases when applicable.
- F. University of Rio Grande & Rio Grande Community College will make a copy of this policy available to all University employees.
- G. The College will create and maintain the position of copyright officer for this institution.
- H. Employees may exceed these policies only with the permission of the copyright officer and/or in consultation with the University's legal counsel.
- I. The appended guidelines will be modified periodically to reflect changes in the law and/or technology.

## **Guidelines**

**Note:** This text provides only a summary of the main provisions of the United States copyright laws. For more details regarding these laws in their entirety, or questions as to what is and what is not permissible under Copyright, please visit the U.S. Copyright Office at <http://www.copyright.gov/> or the Copyright Clearance Center at <http://www.copyright.com/>.

You can also view our FAQ page for answers to some general questions and rules about copyright by clicking [here](#).

### **General Information About Copyright**

Copyright grants to the author or originator the sole and exclusive privilege of creating multiple copies of literary or artistic productions and publishing and selling them. Copyright protection exists for original works fixed in any tangible medium of expression, including:

1. Literary works
2. Musical works, including any accompanying words
3. Dramatic works, including any accompanying music
4. Pantomimes and choreographic work
5. Pictorial, graphic, and sculpture work
6. Motion pictures and other audiovisual works
7. Sound recordings.

### **Copyright Protections and Fair Use Principles**

To help members of the University of Rio Grande & Rio Grande Community College understand and comply with copyright laws, this section summarizes basic principles of copyright law including the application of “fair use”. The principle of Fair Use offers additional access privileges in educational settings.

Copyright law is inherently complex. A fair use of a copyrighted work depends upon a specific determination based upon the circumstances of the use. The principles below are intended to provide an initial context for complying with the law.

**Principle 1:** The copyright holder has important and exclusive rights. Copyright law protects original works such as writings, music, visual arts, and films by giving the copyright holder a set of exclusive rights in that work. These rights include the right to copy, distribute, adapt, perform, display, and create derivative or collected works. In general, any use of copyrighted materials requires permission from, and potentially payment of royalties to, the copyright holder unless the use falls within an exemption in the law, such as the **fair use** exemption.

Principle 2: Responsible decision-making means that University of Rio Grande & Rio Grande Community College members must make demonstrable good faith efforts to understand the fundamentals of copyright law and the reasonable application of fair use. When University members plan to use a copyrighted work in their teaching or research, they must examine the specifics of their use within the context of the law in order to determine whether they should seek permission for the use or depend instead upon the fair use exemption.

Principle 3: An appropriate exercise of fair use depends on a case-by-case application and balancing of four factors as set forth in a statute enacted by Congress. A proper determination of fair use – in daily practice and in the courts – requires applying these four factors to the specific circumstances of the use. These factors must be evaluated to determine whether most of them weigh in favor of or against fair use. The four factors include:

1. The purpose and character of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.
2. The nature of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. For example, photocopies made of a newspaper or newsmagazine column are more likely to be considered a fair use than copies made of a musical score or a short story. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.
3. The amount, substantiality, or portion used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.
4. The effect of the use on the potential market of the copyrighted work. This factor is regarded as the most critical one in determining fair use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

Principle 4: Nonprofit educational purposes are generally favored in the application of the four factors of fair use, but an educational use does not by itself make the use a "fair use." One must always consider and weigh all four factors of fair use together. The educational purpose of the University of Rio Grande & Rio Grande Community College will usually weight the first of the four factors, the purpose or character of the use, in favor of fair use. However, an educational use does not mean that the use is, by that factor alone, a fair use. All four factors must be weighed in making a decision.

### **Copying Materials for Instructional Use**

Under certain conditions specified in copyright law, a photocopy or other reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a photocopy or reproduction for purposes in excess of "fair use", that user may be liable for copyright infringement.

Primary and secondary school educators have, with publishers, developed guidelines which allow an instructor to distribute photocopied materials to students in a class, without the publisher's prior permission, upon compliance with these conditions:

- The distribution of the same photocopied materials does not occur every semester.
- Only one copy is distributed for each student, which must become the student's property.
- The materials include a copyright notice on the first page of the portion of material photocopied.
- The students are not assessed any fee beyond the actual cost of the photocopying.
- The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course.
- The effect of copying the material should not be detrimental to the market for the work. In general, the library should own at least one copy of the work, and the use of the work.

#### *General Guidelines for Print and Electronic Reserve*

- One chapter from a book.
- One article from a journal issue or newspaper.
- Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10% or less of the total length of the book or journal issue.
- A short story, short essay, or short poem.
- A chart, diagram, drawing, graph, cartoon, or picture.

Materials in excess of Fair Use may still be used with appropriate permission and/or fees to the copyright holder.

## **Displaying Media on Campus**

Users must secure public performance rights prior to showing a copyrighted work on campus, unless the work was purchased with public performance rights attached. The only exemption to this requirement is for classroom showings (i.e., the Face-to-Face exemption).

### *Classroom Showing*

Classroom use or showing of a copyrighted video (VHS, DVD, Blu-ray) is permissible under the following conditions:

- The use must be by instructors or by students.
- The use is part of the curriculum for a specific course and is confined to members in a discrete course or other teaching activity.
- The entire audience is involved with the teaching activity.
- The showing takes place in a classroom or other instructional venue.
- The video is lawfully made; the person responsible has no reason to believe that the video was not lawfully made.

### *Public Performance*

Unless a film has public performance rights attached, it should be assumed that permission is required for a public screening of the film. Public performance rights must be obtained prior to scheduling, advertising, or showing a copyrighted film.

If the film is being shown for entertainment purposes, if it includes viewers not enrolled in the course showing the film, or if the film is advertised, it is considered a public (open) showing. The screening of the film is not excused from the "public" designation just because it is an "educational" film, it is being advertised only on campus, or admission is not being charged. The licensing status of the film or work should be determined prior to any advertisement. If it is determined that a public performance license is required, the copyright holder will need to be identified and permission secured. The person showing the film is responsible for securing permission and paying any performance fees.

### *Off-Air Recording*

- Off-air broadcasts may be recorded and legally shown once to a single class within the first ten days after the date of the broadcast. This does not allow for multiple showings or general showings within the University of Rio Grande & Rio Grande Community College.
- The recording must be from a commercial broadcast (no premium cable channels).
- After ten days the recording may not be shown unless copyright clearance is

obtained.

The professor may retain the recording for an additional 35 days for personal evaluation purposes only. After that time the recording must be erased or copyright clearance obtained.

## **Using Multimedia Materials**

The use of multimedia materials is governed by the Fair Use Guidelines cited above.

### *Existing Video Footage*

Faculty and students are permitted to copy portions of video materials for the purpose of incorporating the clips into a new production for educational use in the classroom, without obtaining permission from the copyright holder.

The borrowed material may not constitute more than 3 minutes of the original work, nor may it comprise the majority of the finished product. The opening screen of the project and any accompanying print material must include a notice that certain materials have been used under the fair use exemption of the U.S. Copyright Law.

The **Digital Millennium Copyright Act (DMCA) of 1998** specifically addressed digital media, including DVDs, and introduced new restrictions on copying. Section 1201 of the DMCA prohibits the circumvention of encryption on all digital media. It is a violation of the DMCA, for example, to make a digital copy of an encrypted DVD, because doing so would require breaking the copy protection. In November 2006, several **exemptions to the DMCA restrictions** were approved. One of the new exemptions is for multimedia works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

### *Guidelines for Using Multimedia Sources*

Existing multimedia (music, lyrics, music videos, motion media, photographs, and illustrations) can be incorporated into a student or faculty multimedia project. The amount of the copyrighted work that a student may use in her/his educational multimedia project is restricted by specific portion limitations (see below). In particular, the portion limitations relate to the amount of copyrighted work that can reasonably be used in educational multimedia projects regardless of the original medium from which the copyrighted works are taken. Only two copies of the student educational multimedia project may be made, for reserve and preservation purposes.

Attribution and acknowledgement are required. Students must credit the sources of the copyrighted works, display copyright notice and ownership information,

and include notice of use restrictions.

- Copyrighted Music, Lyrics, and Music Videos: up to 10%, but in no event more than 30 seconds.
- Motion Media Work: no more than 3 minutes.
- Photographs and Illustrations: no more than 5 images by an artist or photographer. For photographs or illustrations from a published collective work, no more than 10% or 15 images, whichever is less.

## **Digital Millennium Copyright Act (DMCA)**

The Digital Millennium Copyright Act (DMCA) provides an opportunity for Internet service providers (ISP's) to shield themselves from liability for the actions of their users that infringe on the copyrights of others. All institutions of higher education that provide Internet access fall within the scope of the definition of an ISP, with relevant users being their students, faculty and staff. As an ISP, the University of Rio Grande & Rio Grande Community College are potentially liable for monetary damages (plus attorneys' fees) if any of its users provide Internet access to material that infringes on the copyrights of others. The same is true if, for example, a user transmits infringing materials in an e-mail message. Copyright owners are entitled to recover either their "actual" damages, or statutory damages that range as high as \$30,000 per work infringed. (In the case of willful infringement, the statutory damages can be as high as \$150,000 per work.) In all cases, the "fair-use" exemption that allows use of copyrighted materials in narrowly defined circumstances applies to materials in digital form just as it applies to traditional media.

### **University of Rio Grande & Rio Grande Community College *DMCA Procedures***

The DMCA does not require that the University of Rio Grande & Rio Grande Community College "police" the Internet activities of its faculty, staff or students. Rather, it requires that the University respond in specified ways to avoid institutional liability when evidence of infringing activity is brought to its attention or when it receives information that makes it apparent that infringing activity is occurring. The University of Rio Grande & Rio Grande Community College follows DMCA requirements in the following way:

- When the University of Rio Grande & Rio Grande Community College receives a notice from an agent (the RIAA, MPAA or other agent) or the copyright holder, the University will investigate who is attached to the network address given in the notice. Following receipt of a proper notification, the University must "expeditiously" remove ("take down") the infringing material or block access to it when identified content is hosted on institutional resources.
- The University of Rio Grande & Rio Grande Community College must

“promptly” notify the user of the University’s action. Such notification coupled with the removal of the material shields Rio Grande from liability for damages sought for the actions of the user. A member of the Office of Campus Computing & Networking (CC&N) or the campus Copyright Officer will contact the person in question via email to meet with him or her. At this meeting, the specific implications of the infraction will be outlined along with actions required and information on potential legal or disciplinary outcomes.

- The person receiving the notice must sign a statement acknowledging receipt of the notice and understanding that receipt of a second notice will trigger notification to appropriate University officials to determine what sanctions may be issued.
- Upon receipt of a second notice the University of Rio Grande & Rio Grande Community College will follow all of the above procedures, and the individual will be required to additionally meet with the Provost.
- If the individual receives a third notice, the Provost will bring an honor code charge against the individual for disciplinary action.

In February 2007, the RIAA began sending pre-settlement and settlement letters to individuals they believed were infringing upon their rights as copyright owners. If the College receives any such letters, it will notify students or staff that such pre-settlement letters have been received and will forward those settlement letters to the individuals for whom they are intended. If an individual receives such a letter, they are personally responsible for interpreting the Policy and laws and retaining legal advice, if they so choose.

### **Higher Education Opportunity Act of 2008**

The University of Rio Grande follows the Educause recommendations for compliance with the Higher Education Opportunity Act of 2008.

<http://www.educause.edu/library/higher-education-opportunity-act-heoa>

The HEOA legal mandate states more specific requirements for U.S. colleges and universities regarding copyright infractions through the use of Peer to Peer file-sharing technologies. Failure to meet compliance and having repeated offenses from your campus could impact Federal Financial Aid to the institution.

Educause highly encourages three measures of proactive action.

1. An annual disclosure to students describing copyright law and campus policies related to violating copyright law.
2. A plan to "effectively combat the unauthorized distribution of copyrighted materials" by users of its network, including "the use of one or more technology-based deterrents".
3. A plan to "offer alternatives to illegal downloading".

Campus Computing & Networking addresses the Educause recommendations with the following:

1. Rio Grande posts on the website language regarding the use of P2P file sharing and provides training to all LA10001 (Student Success) classes each term.
2. Rio Grande uses a Palo Alto firewall which permits the blocking of all P2P protocol network activities.
3. Rio Grande instructs users of legal alternatives like Apple iTunes, Netflix, Hulu, Amazon, Google Play Store, etc.

Should the rio.edu domain “hostmaster” receive notification of a violation, the CC&N and the Dean of Students (or, Provost) provides verbal warnings informing the suspected violator that the institution has received a “notification of a suspected violation(s)” and does NOT have the ability to shield or protect the individual from legal actions initiated by outside organizations as outlined in the Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws statement.

### **Annual Disclosure**

Each campus must distribute three pieces of information related to copyright policy and law:

- i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;
- ii) A summary of the penalties for violation of Federal copyright laws; and
- iii) A description of the institution’s policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution’s information technology system.

In its "Dear Colleague" letter of June 4, 2010, the Department of Education provided the following sample text for (ii)

### **Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws**

*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 (Title 17 of the United States Code). These*

*rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, 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 details, see Title 17, United States Code, Sections 504, 505.*

*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 Web site of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov), especially their FAQ's at [www.copyright.gov/help/faq](http://www.copyright.gov/help/faq)*

## **Technology, Education, and Copyright Harmonization (TEACH) Act**

The Copyright Clearance Center summarizes the TEACH Act as "... the product of discussion and negotiation among academic institutions, publishers, library organizations and Congress. It offers many improvements over previous regulations, specifically sections 110(2) and 112(f) of the U.S. [Copyright Law, Title 17, U.S. Code, 1976]"

The TEACH Act provides additional guidance and exemptions for non-profit educational institutions to use digital media in distance learning. In order for institutions to use these copyrighted materials in distance education, the institution must meet specific criteria to qualify for its exemptions. There are specific materials to which the TEACH Act exemptions do not apply. Members of the University of Rio Grande and Rio Grande Community College using the TEACH Act exemptions for distance education should consult readily available resources (such as through the **Copyright Clearance Center**) to clarify what is and what is not permissible. The TEACH Act does not supersede fair use or existing digital license agreements.

## **Copyright Permission**

Online forms for copyright clearance and permission, including Pay-Per-Use Services, can be found through the **Copyright Clearance Center**. If the work being used is not a well-known resource, and is not on the Copyright Clearance Center website, then the individual using the work is responsible for contacting the copyright holder and obtaining permission to use the copyrighted work.

## **Acknowledgement**

This Policy was adapted, with permission, from Wellesley College's "Copyright Policy" (<http://www.wellesley.edu/lts/policies/copyrightpolicy>).

## **Additional Information**

Copyright Law of the United States accessed from <http://www.copyright.gov/title17/>

Fair Use section of the U.S. Copyright Law accessed from <http://www.copyright.gov/fls/fl102.html>

The U.S. Copyright Office website accessed from <http://www.copyright.gov/>

The Copyright Clearance Center website accessed from <http://www.copyright.com/>

Digital Millennium Copyright Act accessed from <http://copyright.gov/title17/92appb.html>

Copyright Basics: THE TEACH Act accessed from <http://www.copyright.com/Services/copyrightoncampus/basics/teach.html>