

A GUIDE FOR COLGATE UNIVERSITY FACULTY



Using Copyrighted Works in Teaching

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Adapted from Dames, K. Matthew. **Using Copyrighted Works in Teaching**, Syracuse University, August 2012, by Joanne A. Schneider, University Librarian and Professor in the University Libraries, February 24, 2014. Reviewed by the Library Advisory Committee and George R. McGuire, Chairman, Intellectual Property Group, Bond Schoeneck & King, Syracuse, NY.

Provost's Message

The purpose of the university is to develop wise, thoughtful, critical thinkers and perceptive leaders by encouraging young men and women to fulfill their potential through residence in a community that values all forms of intellectual rigor and respects the complexity of human understanding. — From the university mission statement (Colgate Academic Catalog).

To achieve this goal, the free and open exchange of ideas is vital. In this spirit, this guide is intended to encourage all members of the Colgate community to share knowledge openly with colleagues, students and the public. Yet, the university adheres to the long-standing academic tradition and applicable laws that creators of works own the copyrights inherent in them resulting from their scholarly, pedagogical, and creative activities. This is the most prevalent form of intellectual property that affects the Colgate University community.

The university is committed to helping members of the Colgate community understand and comply with copyright laws. One way is by providing this guide to faculty and other community members to help them make informed, careful, and situation-sensitive decisions about the lawful use of work created by others, particularly in teaching. I am grateful for the efforts of Joanne A. Schneider, University Librarian, and the members of the Library Advisory Committee, chaired by Vijay Ramachandran, Associate Professor of Computer Science, who worked from 2011 through 2014 to help frame these complex issues and determine how best to provide guidance to our faculty. Thanks also go to the Committee on Information Technology that reviewed an earlier draft and provided useful comments. Finally, the Guide was reviewed by legal counsel at Bond Schoeneck & King in Syracuse. This will remain a living document that will be updated as needed to improve its clarity and utility.

Questions about the content of this Guide may be directed to Matt Smith, Head of User Services, University Libraries, msmith1@colgate.edu or 315-228-7302, or Joanne A. Schneider, University Librarian, jschneider@colgate.edu or 315-228-7361.

Douglas A. Hicks
Provost and Dean of the Faculty

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Copyright Basics

Assume everything you use is protected by copyright law—even if there is no copyright notice.

- » Copyright owners receive certain rights as soon as the work is created.
- » Copyright owners provide licenses to people who want to use their works.
- » Copyright exceptions allow faculty members to use limited portions of protected works without obtaining permission, and sometimes without obtaining a license.

The U.S. Copyright Office defines copyright as a form of intellectual property given to an author who creates “original works of authorship” that are “fixed in a tangible medium of expression.” Examples of protected works include literary works, dramatic works, musical works (score and/or lyrics and/or fixed in a tangible medium), motion pictures, pictorial works, and sound recordings.

Copyright protection occurs automatically upon creation, whether or not the author registers the work with the Copyright Office. The protection typically lasts for the author's life, plus an additional 70 years.

Therefore, you can assume that virtually every work you encounter as a member of the Colgate University community—notes, articles, books, magazines, compact discs, DVDs, MP3 files, Web pages, computer code—is protected by copyright that is owned by a person or entity.

Federal law gives the copyright owner a bundle of exclusive rights, which she or he alone can exercise or delegate. These exclusive rights include the right to reproduce the work, the right to adapt the work, the right to distribute the work, and the right to perform publicly or display publicly certain types of works.

The right to grant permission for use of protected works belongs to the copyright owner. In certain cases, however, members of the public may use protected works in spite of an owner's rights. Copyright exceptions (also called limitations) curb an owner's exclusive rights and allow non-owners

to use portions of a work for public interest purposes, sometimes without requiring the owner's permission or without requiring payment of a permission fee. Common copyright exceptions that apply in higher education are the classroom and online teaching exceptions and fair use [see pp.21ff]

Beginning summer 2014, the Libraries have subscribed to the Copyright Clearance Center (CCC) Academic License. This brings CCC's Academic Repertoire, an extensive collection of rights owned by publishers whose materials are frequently used by colleges and universities, into the web of rights Colgate University uses to manage copyright infringement risk. The Annual License allows faculty, students and staff at Colgate to copy and distribute the Academic Repertoire's *text-based materials*, such as book chapters, journal articles, a poem, essay or excerpt, through electronic reserves, a course management system, coursepacks, classroom handouts, research collaboration and administrative communications. The Academic Repertoire includes over a million titles.

We recommend that faculty utilize the [Libraries Course Reserves](#) process to post book chapters, journal articles, or a poem, essay or excerpt to electronic reserves via Moodle since library staff will insure coverage and secure permissions for what we anticipate will be a very small number of items.

Or, to see for yourself if the article or chapter you wish to post for your students is covered under the CCC license, search for the publication title at <http://www.copyright.com/ACLAcademic>.

Types of use not covered the Academic License are copying an entire work or most of it, non-educational uses (e.g. promotional and advertising), performance rights, graphic material without the accompanying text, interlibrary loan, and some items covered by the license but subject to individual publisher restrictions as noted in the license.

The rights provided by the CCC Annual License are reflected in this document, joining those already made available through library licenses to databases of journals and books in digital format, federal government materials in the public domain, open access materials and copyright law's fair use provision.

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Overview

The chart on the following page provides a decision-making framework for permissible uses of copyrighted works within the context of teaching and instruction. More detailed information follows this. Contact Matt Smith, the University Libraries' Head of User Services at x7302 or msmith2@colgate.edu to get answers to any recommendations, use, or permissions questions.

Key Summary Points and Summary Chart

- » Due to our CCC Academic License, faculty members are able to use portions of copyrighted works such as journal articles and book chapters repeatedly from semester to semester.
- » Under limited circumstances, an entire work may be used without permission or payment for curricular purposes (e.g., you hold the copyright or the work is in the public domain).
- » University/Libraries-licensed resources, including full-text articles, e-books, and music, may be used freely within the license's terms and conditions.
- » The broader category of fair use exceptions is determined by a four-factor, fact-specific test, not merely by intended educational or scholarly use.
- » These recommendations may change according to facts, law, or University policy.
- » When planning courses, allow sufficient time for possible copyright consultation and permissions.

MEDIUM	WHAT YOU MAY DO WITHOUT SECURING PERMISSION	ALTERNATIVES AND RECOMMENDATIONS
Books and Monographs	>> Link to licensed full text where available. >> Place essential resources on Library Course Reserves or e-reserves. >> If using library e-reserves, copy 10% of the book or one chapter and use semester-to-semester. >> If <u>not</u> using library e-reserves, copy 10% of the book or one chapter, but only once. >> Provide multiple hard copies to students for classroom use.	>> Repeated use of chapters is allowed via library e-reserves under CCC license. >> If <u>not</u> using library e-reserves, avoid posting scanned copies on Moodle or elsewhere. >> If <u>not</u> using library e-reserves, rotate & update assignment materials regularly. >> For entire works buy book or license e-book.
Articles	>> Link from Moodle to full-text of Library licensed e-resources. >> Place essential resources on Library Course Reserves or e-reserves. >> If using e-reserves, copy 10% of the journal issue or one article and use semester-to-semester. >> If <u>not</u> using e-reserves, copy 10% of the journal issue or one article but only once.	>> Use existing Library resources in online/print versions. >> Repeated use of articles is allowed via e-reserves under CCC license. >> If <u>not</u> using e-reserves, avoid posting scanned copies in Moodle or elsewhere. >> If <u>not</u> using e-reserves, order coursepacks from CU Document Services.
Audio	>> Link to or stream available online audio. >> Use 10% of the work or 30-second maximum of song lyrics, sheet music, and video, but only once. >> Play audio in class >> Play online audio segments >> Place essential resources on Library Course Reserves or e-reserves.	>> Coordinate audio segment creation with Moodle or ITS Media Services. >> Use also may be covered by University performance rights licenses. >> Alternatives include buying the audio.
Video	>> Link to or stream online video where available. >> Use three minutes or 10% of total work, whichever is less, but only once. >> Show video in class where connected to curricular purpose. >> Show online video segments where connected to curricular purpose. >> Place essential resources on Library Course Reserves or e-reserves.	>> Coordinate video segment creation with Moodle or ITS Media Services. >> Non-curricular use (including student clubs) requires a performance license. >> DMCA exemptions may apply. >> Alternatives include buying the video.
Images	>> Use five copies of artistic or photographic images, but only once. >> Use 10% of the collection or 15 total images from a published image collection, but only once. >> Show images in class where connected to curricular purpose. >> Place essential resources on Library Course Reserves or e-reserves.	>> Images created from photography and scanning may qualify as fair use. >> Using images outside Moodle or for publication may not be a curricular use.
Using Moodle	>> Use links to online material instead of uploading copies. >> Use Library Course Reserves or e-reserves for book chapters and journal articles. >> Make resources available only to enrolled students for the semester. >> Don't remove or interfere with copy protections or copyright notices. >> Except for journal articles and book chapters posted via e-reserves, when posting copies made within the guidelines, don't use the same work repeatedly from semester to semester.	>> Repeated use of chapters and articles is allowed via library e-reserves under CCC license. >> If not using library e-reserves, post copies and chapters and articles for limited duration. >> Post copies of other copyrighted material only in limited portions, for limited duration. >> Images created from photography and scanning may qualify as fair use. >> Using images outside Moodle or for publication may not be a curricular use.

CONTACTS for assistance in implementing these recommendations:

- » General copyright questions: Matt Smith, Libraries Head of User Services, msmith1@colgate.edu or call x7302.
- » Using Moodle/LMS: ITS Colgate Helpline at helpline@colgate.edu or call x7111.
- » Coursepacks, permissions: in Document Services Chris Sheve, csheve@colgate.edu at x7486 or Michael Holobosky, mholobosky@colgate.edu at x6994.
- » Working with video: ITS Colgate Helpline at helpline@colgate.edu or x7111.

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Detailed Recommendations

- » Due to our CCC Academic License, faculty members are able to use portions of text-based copyrighted works such as book chapters and journal articles repeatedly from semester to semester via library e-reserves.
- » If faculty members chose not to use library e-reserves, they may, without securing permission, use limited portions of copyrighted works for curricular purposes, if, as summarized in the Overview, the instructor's decision to make the copy is spontaneous and has not been made far enough in advance to reasonably expect a timely reply to a request for permission.
- » Under limited circumstances, an entire work may be used for curricular purposes (e.g. public domain, you own the rights, work not eligible for copyright protection) without permission.
- » Except for book chapters and journal articles or limited portions such as a poem, essay or excerpt, any time the instructor decides to make copies of limited portions of copyright works in a format different from the original, either permission must be sought or licensing utilized.
- » Faculty are encouraged to make extensive use of works the University has licensed for the university community, including scholarly articles and music, within the license's terms and conditions.

As a general rule, you may, without first seeking permission or paying a fee, use limited portions of lawfully acquired copyrighted works for teaching purposes when using those works to support curriculum-based instructional activities.

You may even use an entire work without permission in limited circumstances, such as when the work is in the public domain, the work is not eligible for copyright protection, or where you own the rights in the work.

However, aside from book chapters and journal articles or limited portions such as a poem, essay or excerpt placed on library e-reserves, it is necessary also that the copying must be at the instance and inspiration of the instructor; and that the decision to use the work not have been made far enough in advance to reasonably expect a timely reply to a request for permission. Moreover, the copies must be for only one course in the school; no more than one short poem, article, story, essay, or two excerpts may be copied from a single author; and no more than three may be copied from a single collective work or periodical volume during one class term (although this does not apply to current new periodicals and newspapers, or to current news sections of other periodicals); and no more than nine instances of multiple copying for a single course must occur during one class term. Be aware, however, that the following prohibitions apply to both single copies for instructors and multiple copies for students:

1. Except for book chapters and journal articles placed on library e-reserves, the copying cannot be used to create, replace, or substitute for anthologies, compilations, or collective works;
2. Instructors may not copy works intended to be “consumable” in the course of study, including workbooks, exercises, standardized tests, test booklets, and answer sheets;
3. The copying cannot substitute for the purchase of books, publishers’ reprints, or periodicals; cannot be directed by a higher authority, and; cannot be copied in more than one term; and
4. The student shall not be charged beyond the actual cost of photocopying.

You are encouraged to use works the University has licensed already. The University Libraries spend millions of dollars annually so that faculty and students can safely and legally access and use a wide range of scholarly journals, electronic books, and music. Use of licensed works—including works accessed through the Library's database collection and Creative Commons-licensed materials—are subject to the terms and conditions of the license agreement. The access and use terms of these agreements typically override copyright considerations, and may be broader than what copyright allows. In most cases, you may use these licensed works repeatedly (semester after semester) without incurring copyright charges or having to seek permission. The recommendations in this chapter provide endorsed principles for commonly used types of media. The use principles vary widely based upon medium.

The recommendations presume you are:

- » Using copyrighted materials for teaching and curricular purposes, not for scholarly research, scholarly publication, or commercial purposes;
- » Teaching for Colgate University, whether in a non-tenured or tenured/tenure-track status;
- » Using one of the University's Learning Management Systems (LMS) for students to access course materials, whether the course meets exclusively in person; partially in person and partially online; or exclusively online. (A Learning Management System (LMS) is a software application for the administration, documentation, tracking, reporting and delivery of e-learning education courses or training programs);
- » Using legally purchased or legally obtained materials; and
- » At all times abiding by the University's rules, regulations and policies, and applicable state and federal law.

(a) Books

1 . What Is Included

- » Books

- » Reports
- » Dissertations and theses

2 . Use Recommendations

Ordinarily you may use 10% of the text or 1,000 words of a book, whichever is less, depending upon the book's content and subject matter, without prior permission. This typically will equate to a single book chapter. Unless you go through library e-reserves, if you use the same excerpt again in another semester, you must obtain permission.

3 . Special Circumstances

- » Poems: You may use an entire poem of fewer than 250 words. For multiple poems by a single author, use three poems or less. For multiple poems in an anthology, use five poems or less.
- » Rotation principle: Unless you go through library e-reserves, be sure to rotate use of book chapters, both in class and on any university learning management system. If you are using the same book chapter for a single academic year, you should arrange to pay a permission fee for use during the next academic semester or use another resource.
- » Digitizing books: Unless you go through library e-reserves, digitizing portions or chapters of books requires a format shift from the paper-based book to a digital document format (usually an Adobe Acrobat, or PDF file), and doing so may constitute copyright infringement. Consult the Libraries' Head of User Services prior to posting or distributing digitized content online, including the University's course management system.
- » Unless you go through library e-reserves, if posting digitized material online, you are responsible for removing the article from the University's learning management system at the end of the semester, once grades have been submitted to the Registrar.
- » Most licensed ebooks are suitable for inclusion in the University's courseware system via hyperlinks. Link to ebooks rather than digitizing portions of books.

(b) Journal Articles

1 . What Is Included

- » Single articles from journals or multivolume serials

- » Magazine articles
- » News articles

2 . Use Recommendations

The standards for using articles and serial material are:

- » The entire work IF

- a hyperlink to the article is provided through the LMS to a University- licensed resource

OR

- the article is assigned in a syllabus AND students do their own research to find the article;

OR

- make a copy of the article available to students through library e-reserves

» If you do not go through library e-reserves, you may use 10% of the text or 1,000 words, whichever is less, without permission but you must obtain permission for a repeat use.

Using links instead of posting electronic versions of articles (e.g., an Adobe Acrobat or Micro-soft Word document) into the LMS avoids potentially problematic electronic copying and distribution. Alternatively, instructing students to search for and find the work on their own teaches useful research skills. Further, linking to the resource from the LMS limits access to students who are enrolled in the class; makes it unnecessary to remove posted articles at the end of each semester; limits the financial and paper costs that may arise through the production of coursepacks; and optimizes the use of resources on which the Library spends millions of dollars annually.

If you need help in locating appropriate scholarly articles or journals for your class, please contact your Library Liaison. A list of subject specialists is available online at <http://exlibris.colgate.edu/services/departments/libraryfacliaisons.html>.

3. Special Circumstances

» **Coursepacks:** These are copies of compiled articles or book chapters that are printed and reproduced for curricular and educational use. Without exception, coursepacks require payment of permission or reproduction fees, and often both. For more information contact Document

and Mail Services: Chris Sheve, csheve@colgate.edu at x7486 or Michael Holobosky, mholobosky@colgate.edu at x6994

» **Database coverage:** Some of the Library's license agreements may exclude a resource or exclude the time frame in which a particular article was published. In these instances, you have several options. One option is to research whether a Web-based surrogate exists. Another option is to request the article through the Library's Interlibrary Loan (ILL) service and have it posted via library e-reserves. Or, if you do not go through library e-reserves, you may post these articles yourself, under the limitations described above, to the University's courseware system but then you are responsible for removing the ILL article at the end of the semester after grades have been submitted to the Registrar.

» **Articles that are unavailable through licensed resources:** Contact the Library subject liaison assigned to your department/program for information on how to access or make available materials that are not available through the Library's electronic resources collection. A list of subject liaisons is available at <http://exlibris.colgate.edu/services/departments/libraryfacliaisons.html>

» **Articles that are available via pay-per-use:** Do not to link to digital resources that incur a per-use fee, e.g. articles obtain through the Wiley Blackwell token program. Instead, contact Bonnie Kupris, the Libraries' Electronic Reserves Coordinator, at x6562 or bkupris@colgate.edu for assistance.

» **Posting links through Moodle/LMS:** For help with posting article links through the University's LMS, please contact Bonnie Kupris, Electronic Reserves Assistant, at x6562 or bkupris@colgate.edu, Kristi Mangine, Science Library Coordinator, at x7312 or kmangine@colgate.edu, or Mike Poulin, Head of Digital Initiatives and Resources, at x7025 or mpoulin@colgate.edu. *Note that persistent links captured on campus will generally not work "off campus" without additional formatting.*

(c) Music and Audio

1 . What Is Included

- » Non-music audio recordings (all analog and digital formats)
- » Sound recordings (all analog and digital formats)
- » Song lyrics
- » Sheet music and scores
- » Music video

2 . Use Recommendations

The standard for using music or audio without prior permission is to:

» stream sound recordings and non-music audio recordings;

AND

» limit song lyrics, sheet music and music video to 10% or a 30-second maximum (first-time use only).

The University maintains performance rights licenses that allow a wide range of musical performances on campus, including through the University's courseware management system. These licenses allow instructors to use sound recordings, the main audio category, for curricular purposes. Instructors are responsible, however, for preparing audio files for use in the University's courseware management system.

3 . Special Circumstances

» **Format shifting:** Although the University's performance rights licenses allow you to stream sound recordings through Moodle or other University-owned and authorized learning management systems, they do not allow the sound recording to be copied or digitized for the purpose of transferring a physical format (e.g., album, compact disc) to a digital format. Please consult with the Libraries Head of User Services before adding format-shifted—or “ripped”—music to the University's course management system.

» **iTunes and other digitally licensed copies:** Most legally licensed digital music files are bound by a contract that says they can be used for personal purposes only. Such a contract precludes faculty from placing such files on the University learning management system for curricular purposes.

» **In-class performances:** You may play legally purchased or owned music within the physical classroom for curricular and teaching purposes.

» **Lyrics, sheet music and tablature:** Use of scores, sheet music, tablature, and lyric books almost always requires faculty and students to purchase such materials or license them from an approved online repository.

» **Special edits:** If you alter or edit the work, be careful not to change the work's fundamental character.

» **Historic sound recordings:** Sound recordings that were made prior to February 15, 1972, fall into a special category outside the University's performance rights license. Please contact the Libraries Head of User Services if your class requires routine access to such material.

» **Bootleg copies:** Under no circumstance should faculty members upload any bootleg, gray market, black market, promotional audio, or clips from such sources to the University's courseware management system.

» **Streaming audio files through Moodle/LMS:** For help with streaming audio files through the University's courseware system, please contact the ITS Colgate Helpline at helpline@colgate.edu or x7111.

(d) Video

1 . What Is Included

- » Film (any format)
- » Video (any format)

2 . Use Recommendations

The standard for copying a video without copyright permission for a first use is three minutes or 10% of the total work, whichever is less.

Please contact the ITS Colgate Helpline at helpline@colgate.edu or call x7111 for guidance on how to prepare video clips for curricular use on the University's courseware management system.

3 . Special Circumstances

» **Format shifting:** Unlike with music, the University does not maintain a broad performance rights license that covers video use. Additionally, federal laws do not clearly allow individuals or University personnel to copy or digitize commercially released videos, especially when those videos contain an encryption scheme. In 2010, however, the Librarian of Congress, upon recommendation from the Register of Copyright, concluded that consumers may bypass the encryption on “lawfully made and acquired ... motion pictures on DVDs” in order to “incorporate short portions ... into new works for the purpose of criticism or comment,” when the owner reasonably believes that doing so “is necessary to fulfill the purpose of the use in ... educational uses by college and university professors.” Please contact the ITS Colgate Helpline at helpline@colgate.edu or call x7111 for further instructions on implementing proper procedures for developing video snippets

» **Full films:** Should you require that students review an entire film for curricular purposes, the options are (a) show the film in class (either during the regularly scheduled class time or a

separate time where the viewing is limited to class members); (b) require students to purchase the film; (c) require students to rent the film.

» **Libraries film collection:** Films that the Libraries owns may be checked out for in class viewing, but you should avoid using these films for the purposes of format shifting or creating short film clips. The Libraries have obtained streaming rights for a small number of films as indicated in the bibliographic record for the item in the online catalog. You may use a hyperlink in your LMS for students to use to access the recording.

» **Non-instructional video showings:** You may play videos you have bought or own within the classroom for curricular and teaching purposes. But showing video or film for other purposes – including film festivals not connected to a regularly scheduled class, student film night, or student club movie showings – likely requires payment of a separate performance license fee. Contact Rhonda Pancoe, Library Media Acquisitions Coordinator, x7858, rpancoe@colgate.edu.

» **Bootleg copies:** Under no circumstance should you upload any bootleg, gray market, black market, or promotional video, or clips from such sources, to the Moodle or another university online platform.

» **Streaming video files through Moodle/LMS:** For help with streaming video files through the University's courseware system, please contact the ITS Colgate Helpline at helpline@colgate.edu or call x7111 for guidance.

(e) Images and Visual Art

1 . What Is Included

- » Illustrations and drawings
- » Paintings
- » Photographs
- » Slides
- » Comic books

2 . Use Recommendations

The standards for using visual art without permission are

» One entire photograph/illustration and no more than five copies of artistic or photographic images by a single artist, for a first use, are used;

OR

» If the images are in a published collection, 10% of the collection, or 15 total images, whichever is less.

3 . Special Circumstances

» None

(f) Using Moodle and Other LMS Packages

» Moodle is the University's primary learning management system (LMS) although it supports the use of other platforms as well.

» Faculty members, teaching assistants, and LMS administrators should use Moodle or other LMS extensively to manage access to curricular materials.

» Where possible, link to resources from an authorized LMS instead of posting resources on the LMS.

» These recommendations focus on Moodle, but apply equally to other LMS packages.

A learning management system (LMS) is a software application that manages, administers, and tracks content and events faculty use in the online education context. An LMS also integrates with other important university computer systems, such as registration, and includes functionality that allows faculty to manage and limit content distribution to enrolled students and other authorized parties.

Colgate University has adopted Moodle as its primary learning management system, but other systems may qualify as University-authorized LMS packages.

You are strongly encouraged to use an authorized LMS as much as possible to link to, store, and manage distribution and use of copyrighted curricular materials.

1. Link Instead of Post

Where possible, linking to resources from the LMS via a URL is always better than posting the content directly on the LMS. This avoids unnecessary and problematic electronic copying and distribution. Further, linking to the resource from the LMS limits access to students who are enrolled in the class; avoids having to remove posted articles at the end of each semester; limits the financial and paper costs that may arise through the production of coursepacks; and optimizes the use of resources on which the Library spends millions of dollars annually.

2. Post Only Allowable Portions of the Copyrighted Work

If posting is necessary, post only allowable portions. You may perform all or part of a non-dramatic literary or musical work; perform reasonable and limited portions of other types of works; or display any work “in an amount comparable to that which is typically displayed in the course of a live classroom session.” Please note that while you may show an entire audiovisual work (such as a movie) in a face-to-face classroom setting, the TEACH Act may allow only reasonable and limited portions of that same audiovisual work to be shown to online students. The Recommendations provide options and alternatives.

3. Make the Work Available for a Limited Time (except for book chapters and journal articles posted via library e-reserves).

Under the TEACH Act, course administrators, whether they be faculty, teaching assistants, or LMS administrators, must prevent copyrighted works from being retained for longer than the class session. As a result, you may make a copyrighted work available as long as is needed to complete either a single class session, or several class sessions if that work continues to be “an integral part” of each of those class sessions unless you have posted book chapters and journal articles via library e-reserves that are covered by the Libraries Copyright Clearance Center’s Academic License. The LMS allows course administrators to define time availability options for different types of works, and you should regularly implement these options. Under no circumstances should copyrighted material be made available through the LMS beyond the date when grades are due to the Registrar.

4. Prevent Dissemination of the Work

Course administrators must use technological measures that reasonably prevent enrolled students and authorized personnel (including faculty) from distributing protected works to unauthorized recipients who are not enrolled in or officially affiliated with the course. For example, instructors should only post video clips that are delivered as streaming media to prevent the clips from being downloaded by the students. Additionally, you should include a warning that further copying or distributing the work may constitute a copyright infringement.

5. Make Works Available Only to Enrolled Students

Moodle's and other authorized LMS integration with the University's registration system allows password-protected access to enrolled students, select teaching assistants, and faculty. You should strictly enforce these access rules.

6 . Do Not Interfere with Existing Copyright Protections

If a protected work uses digital rights management (DRM) or other technological measures to prevent retention or unauthorized further dissemination, the faculty member must not circumvent that protection or engage in conduct that could interfere with those protections. This rule has a limited exception with respect to movie snippets that are used for comment and criticism. For more details about this exception, please see the video recommendations.

7 . Do Not Use the Same Work Repeatedly (except for book chapters and journal articles posted via library e-reserves).

Both copyright law and recommendations warn against using protected works repeatedly or systematically without securing the necessary permission, whether every semester or every year. Use of a work repeatedly means the faculty member had sufficient time to obtain the appropriate permissions, or to select and use alternative materials. If your curriculum requires you to use the same material repeatedly, and the University does not license that material (see "Journal Articles" and "Music and Audio," above), unless the items are book chapters and journal articles you posted via library e-reserves that are covered by the Libraries Copyright Clearance Center's Academic License, consider arranging with the Bookstore to create a coursepack.

4

Legal Principles

- » Using copyrighted works through a license, exception, or fair use all are allowed; using works beyond these categories is an infringement and against University policy.
- » The exceptions that allow curricular use without copyright owner's permission are the classroom teaching exception and the online teaching exception.
- » Fair use allows use of copyrighted works based upon a four-factor, fact-specific test.

Using protected works for teaching purposes falls into four basic categories: use through a license, use through a statutory exception, use through the fair use doctrine, and infringing use. A work that is not subject to copyright protection is open to unrestricted use.

This section summarizes the basic legal principles that govern use under each of these categories. All of these principles have been incorporated into the previous sections.

(a) Unlimited Uses

As a general rule, you may use works for teaching purposes without limitations in the following circumstances:

1. You own the copyright (not just physical possession of the work);
2. The work is in the public domain; or
3. The work does not qualify for copyright protection.
4. The work is allowed through a license.

If any of these circumstances apply, you need not worry about any copyright issues.

(b) Allowable Uses: Licenses

A license is a contract that allows access to information under certain terms and conditions. The license's terms and conditions will govern who can access the information and what authorized users can do with the information.

Today, license contracts govern access to and use of most electronic information, including journal articles and e-books. (License agreements also govern the creation of printed coursepacks.) The Libraries negotiates and maintains licenses that allow the university community to access and use

journals, e-books, and special collections materials. Additionally, the University negotiates and maintains licenses that allow the University community to play music for educational purposes.

The rules for using licensed information for teaching purposes vary according to vendor, medium, and type of information. By and large, however, faculty members can broadly use licensed works repeatedly for curricular purposes. Specific recommendations for using specific types of media are provided in Section 3.

This includes the Copyright Clearance Center (CCC) Academic License. This brings CCC's Academic Repertoire, an extensive collection of rights owned by publishers whose materials are frequently used by colleges and universities, into the web of rights Colgate University uses to manage copyright infringement risk. The Annual License allows faculty, students and staff at Colgate to copy and distribute the Academic Repertoire's *text-based materials*, such as book chapters, journal articles, a poem, essay or excerpt, through electronic reserves, a course management system, coursepacks, classroom handouts, research collaboration and administrative communications. The Academic Repertoire includes over a million titles.

(c) Allowable Uses: Statutory Exceptions

Statutory exceptions are laws that allow members of the public to use limited portions of a protected work without permission, and possibly without requiring payment of a license fee. Exceptions balance the copyright owner's exclusive rights. A copyright owner generally has five exclusive rights, depending upon the type of work. Those exclusive rights are:

- » The right to reproduce (or copy) a protected work;
- » The right to create derivative works (or adaptations) based upon a protected work;
- » The right to distribute a protected work;
- » The right to display a protected work publicly; and
- » The right to perform a protected work publicly.

Exceptions, so-called because they serve as exceptions to one or more of these exclusive rights, are also called "limitations" because they limit the rights of the copyright owner.

There are two exceptions that govern use of protected works for curricular purposes: the performance and display exception for classroom teaching; and the performance and display exception for distance and online teaching. The remainder of this section summarizes these exceptions and how they affect your use of copyrighted works.

1 . Classroom Teaching Exception

The classroom teaching exception allows University faculty members and their students to perform and display protected works in the course of face-to-face teaching within a classroom. Examples of allowable performances and displays within the classroom setting include:

- » Playing a film or video;
- » Showing photographs or photographic slides;
- » Reading passages aloud from a book or journal article;
- » Projecting a journal article, photograph, or movie onto a screen or whiteboard;
- » Playing recorded music in the classroom;
- » Playing live music in the classroom.

You and your students may do any of these or similar activities under the following conditions:

- » The activity must occur in a physical classroom, or other space that the University uses regularly for teaching;
- » The source material that is being performed or displayed is legally owned or obtained.

The classroom teaching exception does not allow copying, adapting, or distribution of protected works. Those activities, however, may be allowable under a separate exception or fair use.

2 . Distance and Online Teaching Exception

The online teaching exception, which was codified in 2002 legislation commonly known as the TEACH Act, allows educational use of protected works while preserving use restrictions that Congress established in 1998 in the Digital Millennium Copyright Act.

The TEACH Act allows faculty members to use portions of certain types of works for online education. The acceptable uses are:

- » Reading non-dramatic literary works such as books, journal articles, novels, or poems;
- » Performing non-dramatic musical works;
- » Performing limited and reasonable portions of other types of works, including limited portions of movies and screenplays; and
- » Displaying works in an amount that is comparable to what would be used inside the classroom.

Faculty members and their students may use protected works in these ways under the following conditions:

- » The faculty member orders or supervises the performance or display;
- » The faculty member moderates the performance or display;
- » The faculty member limits the source material only to those students who are officially enrolled in the class;
- » The performance or display is an integral part of the class session;
- » The performance or display is directly related to the curricular content;
- » The source material that is being performed or displayed is legally owned or obtained;
- » The instructor must use technological measures that reasonably prevent “unauthorized further dissemination of the work in accessible form by such recipients to others.” For example, instructors should only post video clips that are delivered as streaming media to prevent the clips from being downloaded by the students.
- » Instructors should include a warning that copying or disseminating the work constitutes a violation of the Copyright Act.
- » If a copyrighted work uses a technological measure to prevent retention or unauthorized further dissemination, the transmitting body or institution cannot “engage in conduct that could reasonably be expected to interfere” with those measures.
- » The source material is not a textbook; and
- » The source material is not a work that is produced primarily for use in online education. (In such an instance, the license agreement would govern use of that work.)

Faculty members must meet all conditions to qualify for the online teaching exception.

(d) Fair Use

The fair use doctrine is an additional set of criteria that indicate whether the actual or proposed use of a copyrighted work is allowable without first receiving the copyright owner's permission, or without providing compensation to that copyright owner. While courts have considered and ruled upon the fair use doctrine innumerable times, there is no concrete definition or calculation of what uses—in amount, type, or context—automatically constitute fair uses. Since each fair use situation raises its own facts, no generally applicable definition is possible.

The fair use criteria are outlined in four standards, which Congress codified in Section 107 of the current Copyright Act. Those four standards are:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Although you may decide after assessing the four factors that your use is fair, only a judge, jury, or arbitrator may make a binding determination regarding fair use if a copyright owner decides to enforce his/her rights.

The fair use exception is available to all faculty members for all types of works in any medium, even if their actual or prospective use of protected works does not qualify for either of the teaching exceptions that have been outlined above. The Libraries' Head of User Services will provide additional information about the fair use doctrine and assistance with making fair use determinations in training sessions and individual advisory sessions beyond this Guide.

(e) Infringing Uses

Any use of a protected work that is outside the scope of a statutory exception and has not been licensed is a copyright infringement and a violation of University policy.

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Key Contacts

Libraries - Head of User Services and Copyright Advisor

General copyright questions: Matt Smith, Libraries Head of User Services, msmith1@colgate.edu or call x7302.

Academic Technologies/ Digital Media Services

ITS Colgate Helpline at helpline@colgate.edu or call x7111.

Art and Art History Department/Visual Resources

Image copyright questions: Lesley Chapman, Visual Resources Curator, lchapman@colgate.edu or call x7594.

Document and Mail Services

Coursepacks, permissions: Chris Sheve, csheve@colgate.edu at x7486 or Michael Holobosky, mholobosky@colgate.edu at x6994.

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Conclusion

The information in this Guide is designed to advise members of the Colgate University community in their use of scholarly information and resources and constitutes the university's position on the curricular use of works protected by copyright law. Since copyright law is complex, this guide may not answer all questions or provide recommendations applicable to every situation that faculty members, support staff, and blended or online course administrators may encounter. For additional information, contact Matt Smith, Libraries Head of User Services, msmith1@colgate.edu or call x7302, who also may consult with the university's legal counsel at Bond Schoeneck and King in Syracuse, NY, to obtain the most informative response.