

MOUNT VERNON NAZARENE UNIVERSITY

Copyright Protocol

1. Introduction.

On October 19, 1976, the United States Congress approved the Copyright Act (Pub. L. No. 94-553, 90 Stat. 2541). This statute protects all copyrighted materials and supersedes all previous federal copyright law. The purpose of the Copyright Act is to protect the creative rights of individuals, to promote academic use of copyrighted materials, and to encourage creative expression. Congress has amended the law numerous times to adapt to societal changes and technological advances.

In the university environment, the two most important amendments to the Act are the Digital Millennium Copyright Act of 1998 and the Technology, Education, and Copyright Harmonization Act of 2002. In the codified version of the Act (U.S. Code, Title 17), the law limits what, how, how much, and why an individual may copy a copyrighted work. Nevertheless, the law was designed to enable researchers, educators, and students access and reproduction rights to copyrighted materials for educational purposes in the Educational Fair Use doctrine (Sec. 107).

2. Definitions of Mount Vernon Nazarene University Community Members.

“Adjunct Instructors” means all individuals who have been given a specific teaching or curriculum assignment by MVNU but who are not regular MVNU faculty.

“Faculty” means all individuals considered part-time or full-time that have a signed faculty contract with MVNU.

“Staff” means all individuals who are employed by MVNU either full-time or part-time either paid by salary or by hourly wages who are not faculty.

“Students” mean all individuals who are formally registered at MVNU with either full-time or part-time active status.

3. MVNU Copyright Policy Statement.

It is the policy of Mount Vernon Nazarene University to conform to the existing United States copyright laws for those associated with MVNU to use and maintain the highest possible ethical standard in their use of copyrighted materials for educational, administrative, and personal purposes.

The MVNU community is informed that violations of copyright are punishable under certain circumstance with substantial civil penalties and civil awards. Courts generally hold individuals personally responsible for any copyright infringement.

University personnel with direct responsibility for reproduction equipment, such as photocopy machines, audio and video recorders, CD burners, computers, and any other technology capable of reproducing copyrighted material must take reasonable steps to insure that the use of those technologies by themselves and others are within the scope of the applicable copyright laws.

Requests made to University employees for copies of multimedia copyrighted material, including but not limited to video duplication and CD burning, must be accompanied by a written authorization by the requesting party. The requesting party is responsible for any infringement.

Outside the limits of the Act's detailed exemptions, copies of copyrighted materials must be accompanied by written permission of use or duplication from the copyright holder.

Under no circumstances shall it be necessary for Mount Vernon Nazarene University employees to violate copyright in order to properly perform their duties. The University will not be responsible for any violations of the copyright law by its employees.

4. Overview of the Copyright Act of 1976.

- 4.1 The U.S. Copyright Act of 1976 (Pub. L. No. 94-553, 90 Stat. 2541) and its amendments supersede all previous federal copyright law.

To be eligible for copyright protection, a given work of authorship must also be "original" and "fixed in a tangible medium of expression". 17 U.S.C. Section 102 (a).

To be "original", the work need only reflect a minimal degree of creativity and not have been copied. *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 245 (1991).

Copyright protection attaches automatically at the moment of creation. Registration is a prerequisite to filing a lawsuit for copyright infringement, but it need not predate the infringement. A copyright owner who registers prior to infringement is eligible for statutory damages of as much as \$150,000.00 per infringement and attorney fees, regardless of actual loss. A copyright owner who registers after infringement is entitled to only provable damages. 17 U.S.C. Section 411-12 and 504-05.

Once copyright protection exists for a work, its owner has five principal exclusive rights, which, in general, no one may exercise without the owner's permission. Those rights are:

- a) the right to reproduce the work, in whole or part;
- b) the right to make derivative works, such as translations, dramatizations, musical arrangements, sound recordings, and other such adaptations, based on the work;
- c) the right to distribute copies of the work to the public by means of sale, lease, loan, gift, or any other form of transfer;
- d) with respect to works capable of being performed, the right to perform the work in a public place or any other place where a substantial number of persons other than family members and friends are gathered; and
- e) with respect to works capable of being displayed, the right to display the work in a public place or any other place where a substantial number of persons other than family members and friends gathered. 17 U.S.C. Section 106

Copyright protection generally exists from the moment of the work's creation until 70 years after the creator's death. If the work is either a work for hire or by an independent contractor who expressly assigns ownership to another party or an anonymous or pseudonymous work, the copyright protection is valid for a set term of 95 years of publication or 120 years from creation, whichever is first. 17 U.S.C. Section 302. It is very difficult to determine if a work has become part of the public domain. When a work enters the "Public Domain" this means that the material now belongs to society at large and any individual or organization may use and reproduce that work without fear of copyright

infringement. It is always advisable to obtain permission when using a work outside its fair use.

Work created within the scope of an employee's employment is considered work made for hire in which the copyright of the work belongs to the employer. MVNU's *Faculty Handbook* details the university's work made for hire policy in Section 2.8.

- 4.2 "Fair Use" is the legal right to copy a limited amount of copyrighted material under certain conditions without undue harm to the copyright owner; such copying is permitted without the permission of the copyright holder. It is the most important exception to the copyright.

Fair Use Exemption at U.S.C. Section 107 reads:

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

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

Under this standard, not every "educational" use is automatically, for that reason alone, considered "Fair Use." All four factors must be considered and balanced in every case. Analyzing the cases surrounding "Fair use", the potential market is a main consideration. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

The following contains broad definitions of the four Fair Use factors:

- a) Purpose-The intended use of the copyrighted material by the copier. Educational use is favored over commercial use.
- b) Nature-The determination as to whether a work contains a high level of Creativity (i.e. a novel) or contains a low level of creativity (i.e. a technical report). The lower creativity of the copyrighted material, the more likely the use will be considered fair.
- c) Amount-The size of the portion of copyrighted material used. The smaller the amount used, the more likely the use will be considered fair.
- d) Effect of use on the market-The determination as to whether the use will cause a sizable decline in commercial sales of the copyrighted material. The lower the effect on the market by the use, the more likely the use will be considered fair.

All four of these criteria will be applied when determining copyright infringement.

- 4.3 The reproduction by libraries and archives exemption (U.S. Code, Title 17, Section 108) allows limited reproduction of copyrighted materials by libraries and archives under

certain conditions. Libraries and archives may reproduce copies of copyrighted works as detailed below.

a) Reproduce one copy if:

- (1) The reproduction has no direct or indirect commercial advantage;
- (2) The library/archives are open to the public; and
- (3) A copyright notice is placed on the reproduction.

b) Reproduce three copies if:

- (1) The item is currently in the collection;
- (2) The library/archives original copy is damaged or deteriorating;
- (3) After a reasonable search effort, the library/archives cannot attain a replacement copy at a fair price; and
- (4) The digital format of the material is not available outside the premise of the library/archives.

c) Reproduce one copy for a library/archives user if:

Interlibrary Loan or Resource Sharing with other libraries/archives is the reason for the reproduction, and the reproduction entails no more than one copy of a shorter work (i.e. journal article) or a small portion of a longer work. The reproduction becomes the property of the library/archives patron, and includes a copyright notice where orders are accepted.

4.4 Without the permission of the copyright holder, the Act permits the performance or display of copyrighted material in a face-to-face educational setting (U.S. Code, Title 17, Section 110). With this exemption, educators may play audio recordings, read books aloud, display videos and DVDs, etc. if:

- a) The performance/display is part of a systematic course of instruction and not for entertainment or recreation;
- b) The performance/display attendance is limited to students enrolled in the course and their instructors;
- c) The performance/display is performed/displayed in a location devoted to instruction; and
- d) The performance/display is the result of a legally made copy of the work, which was not purchased under a license or contract restricting its use.

4.5 The U.S. Congress amended the Act in 1980 with the copying and adaptation of computer software clause (U.S. Code, Title 17, Section 117). This allows the duplication of computer programs if:

- a) It is necessary to create a new copy or adapt the software in order to use it on its intended machine;
- b) The copy or adaptation is for archival purposes only, and the copies/adaptations are destroyed if the original computer program is no longer rightfully held; or
- c) The purpose of the copy/adaptation is for maintenance or repair, and the copy/adaptation is destroyed immediately after the maintenance or repair.

Any copy or adaptation may not be leased, sold, or otherwise transferred without the consent of the copyright holder.

5. Overview of the Digital Millennium Copyright Act of 1998

Congress enacted the Digital Millennium Copyright Act of 1998 (Pub. L. No. 105-304, 112 Stat. 2860, 2887), an amendment to the 1976 Copyright Act, to comply to World International Property Organization (WIPO) regulations and to address the new digital formats available for copyrighted materials. The law prohibits technological methods that elude access control or remove copyright notification from digital formats.

The law allows the following in a nonprofit educational environment:

- a) University Online Service Providers receive protection from copyright liability, placing the liability on the user only if the university registers a Designated Agent with the U.S. Copyright Office.

MVNU's Designated Agent:
Chris Miller, Director of Information Technology Services
Mount Vernon Nazarene University
800 Martinsburg Road Mount Vernon, OH 43050
(740)397-9000, extension 5501
cmiller@mvnu.edu

- b) Universities may create digital copies of their own materials for distance education.
- c) Libraries/archives may make digital copies of copyrighted materials if the digital copy remains on library/archives premise or the current copy exists in an obsolete format. All copies must include a copyright notice.

6. Overview of the TEACH Act of 2002

The Technology, Education, and Copyright Harmonization (TEACH) Act of 2002 (Pub. L. No. 107-273, 116 Stat. 1758,1910) revised Section 110(2) of the Copyright Act of 1976 to encourage distance education. In order for a university to take advantage of this Act, it must fulfill the Act's detailed requirements, including a current copyright policy, limited access to enrolled students, time constraints on availability to copyrighted materials in the digital environment, technological safeguards to avoid student copyright infringement, and faculty and staff copyright education.

The law allows the following in nonprofit educational environments:

- a) The performance or display of copyrighted material in distance learning
- b) The digitization of some copyrighted works unavailable in a digital format.

The purpose of the TEACH Act is to make all the copyright exemptions allowable to educators and students in both the face-to-face and distance learning environments. The Act does not legalize actions in distance education that are not permitted in the traditional classroom setting.

7. International Copyright Law

There is no international copyright law; however, the United States adheres to the statements of the Berne Convention administered by the World International Property Organization (WIPO). Although WIPO and the Berne Convention supply international copyright policy guidelines, they concede that the creation and enforcement of copyright law is the right and duty of individual nations.

The U.S. Copyright Office lists the United States intellectual property relationships with individual nations in **Circular 38a**.

8. MVNU Copyright Guidelines

Under the exemptions detailed in this policy, U.S. copyright law permits the reproduction or use of copyrighted materials by faculty and staff. University personnel shall abide by Federal and University guidelines when using copyrighted materials. Reproduction includes any technology capable of reproducing copyrighted materials.

The MVNU Copyright Guidelines below, divided by material type, apply to the purposes of faculty research, classroom use, and library reserves.

Copying shall not be used to create, replace, or substitute for anthologies, compilations, or collective works. There shall be no copying of or from works intended to be consumable in the course of study or teaching. Copying shall not substitute for the purchase of copyrighted materials, such as books, publisher's reprints, periodicals, CDs, and DVDs.

8.1 The three criteria of consideration are brevity, spontaneity, and cumulative effect.

- a) Brevity-The copying does not exceed the limits of the guidelines provided below for each form of copyrighted materials.
- b) Spontaneity-The copying is the instant inspiration of the individual professor and the decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.
- c) Cumulative Effect - The copying of the material is only for one course. No more than one short work or excerpt of a longer work may be copied from the same author or creator. In addition, no more than three works from a collective work or periodical volume may be used during one class term.

8.2

Print Guidelines	
Single Copies	-A chapter of a book -An article from a periodical or newspaper -A short story, short essay, or short poem -A chart, graph, diagram, drawing, cartoon, or picture from a book or periodical
Multiple Copies	-The copying meets the criteria of brevity, spontaneity, and/or cumulative effect as previously defined.

8.3

Music Guidelines These guidelines apply both to print and recorded music.	
Single Copies	-A song -A movement -A short section from a printed musical work that is unavailable except in a larger work for purposes of preparing for instruction -Excerpts of recordings of copyrighted musical works for the use in aural exercises or examination questions
Multiple Copies	-For classroom use if the excerpt is no more than 10% of the performance, provided that the excerpt is not used for more than one academic semester.
Emergency Copies	-An instructor may make and use, in the case of an emergency, replacement copies of printed music for imminent musical performances only when the purchased copies have been lost, destroyed, or otherwise unavailable.
Editing	-An instructor may edit or simplify purchased copies of music provided that the fundamental character of the music is not destroyed. -Music lyrics shall not be altered or added if none exist.
Performance	-Performance is permitted of copyrighted musical work if: (1) the performance is not for commercial purposes; (2) none of the performers, promoters, or organizers are compensated; and (3) admission fees are used for educational or charitable purposes only. -All other musical performance requires permission from the copyright owner

8.4

Audiovisual Guidelines	
DVD, Video, and other Motion Picture Technology	-Because of the highly creative nature of these copyrighted materials, copies should be subject to the highest level of Fair Use scrutiny.
A Series of Slides (both traditional and PowerPoint)	-Created from multiple sources as long as the reproduction does not exceed 10% of the copyrighted material from any one source, unless the source specifically prohibits any reproduction. -Created from excerpts of multimedia productions, such as filmstrips, videos, and DVDs, as long as the reproduction does not exceed 10% of the entire work or include the creative essence of the work. -Created from a slide series as long as the reproduction does not exceed 10% of the series, include the creative essence of the work, or violate any specific reproduction prohibitions.

Transparencies / Overheads	<ul style="list-style-type: none"> -A single overhead transparency from a single page of a consumable workbook -Multiple overhead transparencies from a variety of sources, not exceeding 10% of the total content of any one source, unless the sources specifically prohibit any reproduction
Classroom Performance	<ul style="list-style-type: none"> -Performance is part of a systematic course instruction and not for entertainment, recreation, or cultural value; -Attendance at performances is limited to the students enrolled in the course, and their instructor(s); -Performance given in a classroom or a similar place devoted to instruction, including libraries and gymnasiums; and -Performance given from a legitimately-made copy, which was not sold under a license or contract restricting its use.

8.5

Off-Air Recording of Broadcast Programming Guidelines These guidelines apply to music and audiovisual off-air broadcast recording by a nonprofit educational institution.	
Copyright Notice	-All copies of off-air recordings must include a copyright notice on the broadcast program as recorded.
Retention	<ul style="list-style-type: none"> -A broadcast program may be recorded off-air simultaneously with a broadcast transmission (including simultaneous cable re-transmission) and retained by a nonprofit educational institution for period not exceeding 45 days from recording. -Upon conclusion of the 45 day retention period, all off-air recordings must be erased or destroyed.
Instructional Use	-An off-air recording may be used once for classroom instruction and repeated once for instructional reinforcement.
Request for Copies	<ul style="list-style-type: none"> -Off-air recording may only be made at the request of an individual instructor and may not be made regularly in anticipation of requests. -The same instructor, regardless of the number of times the program may be broadcast, may not record a broadcast program off-air more than once.
Alterations	-A recording does not need to be used in its entirety, but it may not be altered.
Evaluation	-After 10 consecutive schools days, the copy may only be used for evaluation purposes to determine if the broadcast program should be added to the teaching curriculum.
Additional Copies	<ul style="list-style-type: none"> -A limited number of copies may be reproduced from each off-air recording to meet legitimate needs of the instructor. -Each additional copy shall be subject to all the provisions governing the original recording.

University Responsibility	-Educational institutions establish appropriate control procedures to maintain the integrity of these guidelines.
Alternative to Off-Air Recording	-As part of OhioLINK, MVNU's library holds a licensing agreement with the <u>Digital Video Collection</u> and <u>Art and Architecture Images</u> , which allows the MVNU community to use and copy these resources for educational purposes.

8.6

Computer Software Guidelines	
Special Circumstances for the Use of Computer Software	-The copyright holder through a software license determines the use of computer software by an individual or organization. A software license explicitly states the acceptable uses for the software and the number of machines that the product can be used on and any other terms to conditions. By using the program, the individual or organization is agreeing to abide by the licensing agreement.

8.7

Internet Use Guidelines These guidelines apply to official MVNU websites, websites by individual MVNU employees, eportfolios, and Blackboard.	
Posting	-Website posting is permitted if the poster holds the copyright of the work; -The maintainer of the website received permission in writing from the copyright holder to post the material; or -The copyrighted work falls within the guidelines of Fair Use.
Linking	-Website hyper-linking to other copyrighted web pages is encouraged over "copying and pasting" or scanning of material.

9. Requesting Permission

When Fair Use or another copyright exemption cannot be used to copy a copyrighted work, permission is required.

A formal letter should be sent to the copyright holder to request permission, and permission must be granted in writing from the copyright holder. With the written request, the requester should include a self-addressed, stamped envelope and two copies of a permission form, one for the copyright holder to keep and one to return to the requester. Appendix A details a sample permission letter and form.

Because the copyright of a work does not always belong to the creator(s), it is necessary that the person requesting permission investigate who the true copyright holder of a copyrighted work is before mailing the permission letter.

10. References

Copyright Management Center. Dir. Kenneth D. Crews. 2005. Indiana University B Purdue University Indianapolis. 14 April 2005 <<http://www.copyright.iupui.edu>>.

The Master's College. "Copyright & Intellectual Property Information for the Master's College Community." Santa Clarita, CA: The Master's College, 2003.

Mount Vernon Nazarene College. "MVNC Copyright Policy." Mount Vernon, OH: Mount Vernon Nazarene College, 1996.

"Policy on Off-Air Recording of Broadcast Programming for Educational Purposes." University of California. 1985. University of California. 14 April 2005 <<http://www.ucop.edu/ucophome/coordrev/policy/9-24-85.html>>.

Thomas Legislative Information on the Internet. 2005. The Library of Congress. 14 April 2005 <<http://thomas.loc.gov/>>.

"Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code." United States Copyright Office. 2003. United States Copyright Office. 14 April 2005 <<http://www.copyright.gov/title17/>>.

United States Copyright Office. 2005. The Library of Congress. 14 April 2005 <<http://www.copyright.gov/>>.

"WIPO Intellectual Property Handbook: Policy, Law and Use." World Intellectual Property Organization. World Intellectual Property Organization. 14 April 2005 <<http://www.wipo.int/about-ip/en/iprm/index.htm>>.

APPENDIX A

SAMPLE PERMISSION LETTER AND FORM

[Date]

Materials Permission Department
Anonymous Book Publishers
100 Nowhere St.
Nowhere, NY 13256

To Whom It May Concern:

I am requesting permission to copy the following for continued use in my classroom for [course number and name]:

Title:

Author:

Specific duplication needs: [i.e. chapter title, chart, etc.]

Distribution: To the students of my [course number and name]

Type of duplication: [i.e. photocopying, digital, etc.]

Purpose of use: [i.e. To supplement the course materials]

Sincerely,

[Signature]

[Name] _____

[Address] _____

Please initial the appropriate statement.

I hereby represent that I have the authority to grant permission requested herein for the use of [title] and:

_____ Do grant the permission.

_____ Do not grant the permission.

Signature

Name of authorized signatory

Title

Company

Date