



# COPYRIGHT AND FAIR USE POLICY

**Policy:** Rocky Vista University Copyright and Fair Use Policy

**Dept. Responsible:** Office of Compliance

**Effective Date:** August 2017; Updated September 2020

## Purpose

This policy is not intended to act as a substitute for legal advice, and proper legal advice should be obtained when necessary.

The purpose of the Rocky Vista University Copyright Policy is to provide a summary of United States copyright laws as they relate to the use of copyright protected materials in an educational setting. All Rocky Vista University faculty, staff, and students are expected to act as responsible users of the copyrighted works of others, which includes making informed, good faith decisions that comply with copyright law. When permission to use copyright protected material is required, that permission must be obtained prior to use of the materials. Infringement of another person's copyright is a violation of federal law. The legal ramifications of infringement include fines that range from \$200 to \$150,000 per infringement. Every student, faculty member, and employee of the University is expected to comply with this policy. For additional help with copyright, please see the Title 17 U.S. Code, the United States Copyright Act of 1976, including all amendments enacted by Congress through August 30, 2017.

## Copyright Law

Copyright law protects the expression of an idea; it does not protect ideas, data, or facts. Copyright is a form of legal protection for authors of original works, including dramatic, musical, artistic, literary, and other intellectual products. Copyright gives authors a set of exclusive legal rights for a limited period of time. Under current law, the author's rights begin automatically when a work is created. Copyrighted works are not limited to those that bear a copyright notice (e.g. ©) or to those that are registered. Copyright is automatic and arises upon the creation of a given work. These rights prohibit others from, among other things, using the works without permission or profiting from the sale or performance of these works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

1. Reproduce copies of the original work.
2. Prepare derivative works based on the original copyrighted work.
3. Distribute copies of the work by rental, lease, sale, file sharing, or lending.

4. Publicly perform the work.
5. Publicly display the work.

However, the rights are not absolute. They are subject to "fair use" limitations addressed below.

Copyright applies to any format that is fixed and tangible. Typical formats may include:

1. Printed words
2. Video tape
3. DVDs and CDs
4. Computer files-both audio and video
5. Photographs-both print and electronic
6. Peer-to-peer file sharing, which is the distribution and sharing of digital media using networking technology and/or software.

## "Fair Use"

The provision for "fair use" of a copyright protected work is found in the Copyright Act at Section 107. Under the "fair use" provision, a reproduction of someone else's copyright-protected work may be considered non-infringing if it is used for criticism, comment, news reporting, teaching, scholarship or research. If the reproduction is for one of these purposes, then a determination of "fair use" will be guided by consideration of four non-exclusive factors:

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

The difference between "fair use" and "infringement" of a copyright-protected work is not easy to determine. The burden of establishing a "fair use" is on the user and requires a very circumstance-specific analysis of the intended use or reuse of a work. Here are two examples that illustrate this challenge:

| Likely Fair Use   | Gray Area - Opinions May Vary  | Likely a Violation of Copyright   |
|---|--|---|
| Copying three pages of a 120 page book and posting it via social media                                      | Copying seven pages of a 120 page book and posting it  | Copying an entire book and posting it   |
| If the copied pages are not the "core" of the work in question, a favorable argument for "fair use" exists. | The amount exceeds established standards for acceptable amounts by one page (i.e. greater than 5%). However, courts are not bound by established standards and the Copyright Act contains no such standards. Opinions will vary. | Copying an entire book clearly weighs against a finding of "fair use" as the entire work is used. |

# Copyright Provisions for Higher Education

The Copyright Act contains specific exceptions for the use of copyright-protected materials by academic institutions. These provisions include:

- Section 107 on fair use, which is discussed above.
- Section 108 on reproduction by libraries and archives, which applies to activities such as archiving; replacing lost, damaged or obsolete copies, patron requests for entire works, and interlibrary loans.
- Section 109 on first sale, which permits the resale or lending of copies of works, providing the basis for library lending and the sale of used books.
- Section 110 on the use of materials in an educational setting, which permits certain types of content use in the classroom. Common examples include the use of legally acquired DVDs and CDs in a classroom. The use should be instructional and not for entertainment or reward.

## Digital Millennium Copyright Act

The Digital Millennium Copyright Act ("DMCA") of 1998 endeavors to balance the interests of internet service providers and copyright owners when copyright infringement occurs in the digital environment. The DMCA protects internet service providers from liability for copyright infringement by their users, if the internet service provider meets certain statutory requirements. To fall within the protection of the DMCA, an internet service provider must, among other things, take certain steps when it receives notice that infringing material resides on its network; adopt and implement a policy that provides for termination in appropriate circumstances of users who are repeat infringers; and accommodate standard technical measures that are used by copyright owners to identify and protect copyrighted works. The DMCA protects only the internet service provider, and not the users of its system who infringe copyright. <https://www.copyright.gov/>

## Living Document Statement

This policy is a living document and must remain adaptable to respond to new developments in copyright law. Rocky Vista University will keep this policy under review and modify when necessary.

## Sanctions

Rocky Vista University complies fully with the Digital Millennium Copyright Act ("DMCA"). Users of the RVU network found to have engaged in repeated infringement of copyright are subject to termination of their network access and may be reported to the appropriate Supervisor, Dean, or Student Affairs officer for disciplinary action.