

Policy and Guidelines on the Use of Copyrighted Materials for Education and Research

BENTLEY UNIVERSITY

Authored by:

Matthew Van Sleet, MLIS

Circulation & Reserves Librarian, Bentley Library

Judith Malone, JD

General Counsel, Secretary of the Corporation, Office of the President

Brenda Ulrich, JD

Associate at Law Office of Zick Rubin

Table of Contents

1.0 Introduction

1.1 Policy Statement.....	1
1.2 Purpose	1
1.3 Overview	1
1.4 Scope.....	1
1.5 Responsibilities	1

2.0 Copyright and Fair Use

2.1 General Information about Copyright.....	2
2.2 Copyright Protections and Fair Use Principles.....	3
2.3 Exceptions and Limitations	5
2.4 Seeking Permission.....	6
2.5 Applying the Four Factors of Fair Use.....	7
2.6 Best Practices in Fair Use	9

3.0 Library Services and Copyright

3.1 Interlibrary Loan.....	11
3.2 Internal Document Delivery.....	13
3.3 Printers, Photocopiers, and Scanners.....	15

4.0 Teaching and Copyright

4.1 Classroom Handouts and Coursepacks.....	16
4.2 Library Course Reserves.....	17
4.3 Course Management Systems (Blackboard).....	20
4.4 Displaying Media on Campus.....	21
4.5 Using Multimedia Materials.....	23
4.6 Streaming Media	25
4.7 Distance Education and the TEACH Act.....	27
4.8 The TEACH Act.....	28
4.9 The Digital Millennium Copyright Act.....	39

5.0 Policies, Enforcement, Acknowledgements

5.1 Related University Policies	31
5.2 Enforcement and Penalties for Infringement.....	32
5.3 Acknowledgements.....	33
5.4 Effective Date.....	34

1.0 Introduction

1.1 Policy Statement

Guided by its mission to educate ethical and socially responsible leaders through teaching, research, and service, Bentley University is committed to fostering an environment that provides for the fair and appropriate use of copyrighted materials, in any medium, that is consistent with the spirit and the letter of U.S. Copyright Law. Further, the University believes that the creation, discovery, and dissemination of knowledge are central to the achievement of its mission. The Bentley community shares both an interest in the protection of intellectual property as a creator of such property and in the fair use of copyrighted works in the daily pursuit of research, teaching, learning, and public service.

1.2 Purpose

This policy is intended as a resource for the Bentley University community. It is designed to educate the community on current U.S. copyright law, provide guidance in the use of copyrighted materials for teaching or scholarship, and ensure compliance with federal copyright law. In recognizing that copyright law will continue to evolve in response to technological advances, ongoing discussions among both users and producers of intellectual property, and the generation of case law that may offer new interpretations of fair use, this policy delineates the means by which the university will responsibly approach the use of copyrighted materials.

1.3 Overview

Bentley University's copyright policy is based upon [United States Copyright Law, Title 17, U.S. Code, 1976](#) as well as the U.S. Copyright Office's [Circular 21: Reproduction of Copyrighted Works by Educators and Librarians](#). The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted material. This policy is based on careful review of the law itself, the [Fair Use Doctrine](#) and [related case law](#), the [TEACH Act of 2002](#), the [Digital Millennium Copyright Act](#), and the [DMCA exemptions of 2006](#) as well as a consideration of the community of practice regarding the fair use of copyrighted material, most notably the Association of Research Libraries' [Code of Best Practices in Fair Use for Academic and Research Libraries](#) and its interpretation of fair use.

1.4 Scope

This policy applies to all members of the Bentley University community, including faculty, staff, students, and alumni, and any other persons who have access to information resources, both print and electronic, at Bentley University.

1.5 Responsibilities

Compliance with the federal copyright law and with this policy is the responsibility of every member of the Bentley University community, including faculty, staff and students. All members of the Bentley University community are expected to take a personal interest in becoming informed about copyright law and how it affects work conducted at Bentley University.

This policy has been approved by the Provost and endorsed by the Faculty Senate. The General Counsel has responsibility for this policy. Questions or concerns about this policy should be directed to the General Council.

2.0 Copyright and Fair Use

2.1 General Information about Copyright

The purpose of copyright, as articulated in the United States Constitution, is "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." This principle forms the fundamental basis on which U.S. copyright law stands.

U.S. Copyright law 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:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic work;
- pictorial, graphic, and sculpture work;
- motion pictures and other audiovisual works;
- sound recordings.

2.2 Copyright Protections and Fair Use Principles

To assist members of the Bentley University community in understanding and complying with copyright laws, this document summarizes basic principles of copyright law including the application of the fair use balancing test. 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. New information technologies, e.g., digital information and networked environments, have introduced a wholly new, and in many ways transformed, working environment for the application of copyright. These principles 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 to 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, described in Principle 3 below.

Principle 2: Responsible decision-making means that Bentley University community members must make demonstrable good faith efforts to understand the fundamentals of copyright law and the reasonable application of fair use. When Bentley University community 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:

1. Purpose or character of the use
2. Amount and substantiality of the work being used
3. Nature of the copyrighted work being used
4. Effect of the use on the market for, or value of, the original

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 Bentley University will usually weigh 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.

Principle 5: Reasonable people--including judges and legislators--can and will differ in their understanding of fair use. Copyright law rarely offers a definitive meaning of fair use for any specific application. Thus, the real meaning of fair use depends on a reasoned and responsible application of the four factors. One person's judgment and situation may not match the next, and the differences may be based on variations in facts and circumstances.

Principle 6: By acting responsibly and by making considered and intentional decisions, you can limit your potential liability; document your reasoning for a fair use. Because of the flexible and interpretive nature of fair use, Congress provided significant protection for educators. Not only does the fair use exception apply particularly to educational purposes, but additional laws may limit the monetary liability that educators may potentially face. In any event, educators must possess a reasonable and good-faith belief that their activities are fair use in light of the four factors. By documenting your application of the four factors of fair use to your specific use, you will be better able to demonstrate your activities were done in good faith.

Principle 7: Guidelines and Best Practices, while sometimes helpful, do not determine the entire breadth of fair use protection. In an attempt to clarify the meaning of fair use for common situations, various private parties have negotiated guidelines, but those externally developed guidelines are sometimes inappropriate for the realistic application of fair use to higher education. Similarly, educators, scholars and librarians have recently introduced field-specific codes of best practices to reclaim fair use and to establish a more reasonable approach to the implementation of the fair use doctrine. Both guidelines *and* best practices may be consulted by courts in making fair use determinations, but these are not binding either as limiting permissible activity or as providing safe harbors. Fair use must be determined according to the circumstances of each situation.

2.3 Exceptions and Limitations

Section 106 in Chapter 1 of the U.S. copyright law (17 U.S.C. §106) lists the six exclusive rights copyright owners have regarding their work. However, the next sixteen sections of Chapter 1 in the law set forth many exceptions and limitations on those rights. Four of these exceptions are commonly at play in education:

- [Section 107 Fair Use](#) - Fair use relies on a four-factor use analysis and was codified in the [Copyright Act of 1976](#) (the current U.S. copyright law) and recognizes the public's interest in using copyrighted works in the educational process and to create new works.
- [Section 108 Library Exception](#) - Working in harmony with exceptions like fair use, the library exceptions ensure that libraries serving the public and scholarly research communities will have access to copyrighted works for their non-commercial activities.
- [Section 109 Right of First Sale](#) - This exception makes it possible for anyone to redistribute their purchased copy of a copyrighted work by resale, lending, or donation. It is one of the foundations on which libraries stand ready to lend materials in their collections to their user communities.
- [Section 110 \(1\) Exemptions of Certain Performances and Displays](#) - This section exempts from infringement liability certain performances and displays of copyrighted works, typically in the context of educational settings and allows instructors to screen a film, perform or listen to a piece of music, perform or show a play, and display slides or other images.
- [Section 110 \(2\) Exemptions of Certain Performances and Displays](#) - This section which codifies the Technology Education and Copyright Harmonization Act of 2002 (TEACH Act). The TEACH Act is an important revision to the copyright law that ensures that new technology-based education (e.g., distance education using the Internet) may apply the principles and provisions of fair use in their curricula. Academic institutions must satisfy TEACH Act requirements in order to make its provisions available to their constituents. (Learn more about the TEACH Act in section 4.8)

If the contemplated use of a copyrighted work does not qualify under the library (Section 108), classroom teaching, or distance education exemptions (Section 110), then the more general fair use test of Section 107 is generally applied because that test is much broader and more flexible.

The individual who is using the work must decide which (if any) exemption is applicable. This should be a conscious decision, rather than a decision by default or assumption. It is the responsibility of all members of the Bentley University community to understand the exemptions and to make a good faith determination that the use of a copyrighted work is authorized under one or more of the exemptions. A good faith determination means that the individual must understand the exemption that s/he is selecting, be able to articulate the exemption, and be able to articulate why the exemption reasonably applies to the specific situation. If none of the exemptions is applicable, then permission should be requested for the use of the work.

2.4 Seeking Permission

If the work in question is protected by copyright and is not subject to fair use or other legal exemptions, then you will need to seek permission from the copyright holder in order to make the reproduction or otherwise exercise one of the exclusive rights granted to the copyright owner.

Whenever you are uncertain whether statutory exceptions apply to your specific situation you should either seek permission, or seek the advice of counsel before you proceed with a proposed use.

Sources to Consult When Seeking Copyright Owners

- Ownership information appearing on the face of or inside the item, particularly in the copyright notice
- Internet search engines
- Online telephone directories and address directories
- Print telephone directories when the owner's geographical location is known
- Databases of trade associations or professional groups
- Archives or special collections containing the creators' works; print and electronic resources that identify archives
- [Copyright Office](#) records
- Other online databases listing or collecting creative content
- Individuals involved in creation of the work (even if they are not owners)
- [Collective Rights Organizations](#) Describes organizations and agencies that manage rights or help identify or locate copyright owners.

"Reasonable Effort"

Section 108 of the Copyright Act allows libraries to reproduce published and unpublished materials under certain conditions provided that a "reasonable effort" is made to determine that the material cannot be obtained at a fair price from other sources.

The scope and nature of a reasonable effort to determine that a copy in acceptable condition at a fair price cannot be obtained will always require recourse to commonly known trade sources, i.e., current publication lists or distributors of the specific medium. The reasonable effort will vary according to the circumstances of a particular situation. If contact information for the copyright holder is available, at least one attempt to obtain permission from the copyright holder to make the desired number of copies must be made, and this attempt should be documented.

2.5 Applying the Four Factors of Fair Use

Fair use ([Section 107 of the Copyright Act of 1976](#)) balances the rights of copyright holders with the needs of scholars to promote teaching, research and the free exchange of ideas. Fair use defines particular circumstances in which it is permissible to use copyrighted material free from permissions and royalties under specified conditions detailed in the four factors of fair use. All of these factors should be considered when evaluating each use of a copyrighted work. Fair use is not a means by which to circumvent copyright law, but a legal assertion of use which will need to be justified through the careful application of these conditions. These factors must be evaluated to determine whether most of them weigh in favor of or against fair use:

1. ***The purpose and character of the use***, including whether the copied material will be for nonprofit, educational, or commercial use. Recent court decisions have emphasized that this first factor is a primary indicator of fair use. Educational purposes such as criticism, commentary, or research have historically favored fair use, but courts evaluate whether such use is transformative, meaning that the material has been used to help create something new rather than merely being copied verbatim into another work. When incorporating portions of copyrighted work, the following questions must be asked:
 - *Does your use fulfill a specific pedagogical purpose?*
Acceptable: Using content to engage in critical analysis, encourage further inquiry, or meet well-defined learning outcomes.
Not acceptable: Using content with no intrinsic value or relevance to course objectives.
 - *Does your use transform the original by adding new expression or meaning?*
Acceptable: Using content to add value to the original by creating new information, new aesthetics, new insights and understandings.
Not acceptable: Using content verbatim with no expressed criticism or commentary.
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 and marketed for use in classroom instruction, such as textbooks, workbooks, or coursepacks, is less likely to be a fair use than is the duplication of materials prepared for public consumption.
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. If the portion used is considered the “heart of the work,” it is unlikely to qualify as a fair use.
 - Fiction books – limit to one chapter or excerpt totaling no more than 10% of total work.
 - Non-fiction books with fewer than 10 chapters – limit to no more than 10% of the total work.
 - Non-fiction books with 10 or more chapters – limit to one full chapter or its equivalent.
 - Journals and periodicals – limit to one article per issue.

NOTE: The 10% rule is merely a guideline that one court has endorsed. In certain situations, amounts more, or even less, than 10% may be appropriate provided the amount is no more than what is necessary to fulfill the transformative purpose.

4. ***The effect of the use on the potential market of the copyrighted work.*** If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, then that use is unlikely to be found a fair use. Repeated use of the same material over consecutive semesters weighs in favor of requiring permission and/or a license. Courts typically do not favor fair use if appropriate licensing or permissions are available for purchase for the work in question. However, if the first three factors favor fair use, particularly in the fulfillment of educational purposes, such use would *likely not* be considered as detrimental to the market for the work. Conversely, if the first three factors indicate use that does not favor fair use, especially use for commercial benefit, then the market effect would be viewed negatively.

For further guidance in applying fair use, consult the [Copyright Information Research Guide](#).

2.6 Best Practices in Fair Use

Recent efforts by educators, scholars and librarians to establish a more reasonable approach to the implementation of the fair use doctrine have resulted in the creation of a series of Codes of Best Practices in Fair Use. These best practices were developed through multiple partnerships at [The Center for Social Media](#) to address the specific research and pedagogical needs of particular areas of study and contain guiding principles based upon varying interpretations of copyright law to assist in making informed decisions about the use of copyrighted work in teaching and research.

DISCLAIMER: Best practices are based on interpretations of the fair use doctrine by experts in the relevant fields. Though courts will consider and often defer to such documents as guidelines on industry and customary practice, they are not law. They are included in this policy to guide and assist Bentley staff in making fair use determinations, but should not be construed as legal authority.

Academia and Scholarship

- [Code of Best Practices in Fair Use for Academic and Research Libraries](#)
The result of an extensive survey of library professionals, this is a code of best practices in fair use devised specifically by and for the academic and research library community. It identifies eight situations that represent the library community's current consensus about acceptable practices for the fair use of copyrighted materials and describes a carefully derived consensus within the library community about how those rights should apply in certain recurrent situations. (*Association of Research Libraries*)
- [Code of Best Practices in Fair Use for Scholarly Research in Communication](#)
Created by a committee of communication scholars within the International Communication Association, this document is a code of best practices that helps U.S. communication scholars to interpret the copyright doctrine of fair use. This guide identifies four situations that represent the current consensus within the community of communication scholars about acceptable practices for the fair use of copyrighted materials. (International Communications Association)

Media Literacy

- [Code of Best Practices in Fair Use for Media Literacy Education](#)
Created after convening ten meetings with more than 150 members of leading educational associations and other educators across the United States, this document is a code of best practices that helps educators using media literacy concepts and techniques to interpret the copyright doctrine of fair use. This guide identifies five principles that represent the media literacy education community's current consensus about acceptable practices for the fair use of copyrighted materials, wherever and however it occurs: in K-12 education, in higher education, in nonprofit organizations that offer programs for children and youth, and in adult education. (*Temple University, American University*)

Film

- [The Society for Cinema and Media Studies' Statement of Best Practices for Fair Use in Teaching for Film and Media Educators](#)
Developed after surveying over 600 educators, this statement of best practices aims to clarify some of the issues concerning the permissible use of media for teaching. Among the goals of this statement is to provide practical assistance to film and media educators in determining whether a particular use of a work is permissible and to formalize customary practices that over time can help guide courts in determining what types of users are generally accepted as non-infringing by film and media educators. (*Society of Cinema and Media Studies*)

Visual Arts

- [Statement of the Fair Use of Images for Teaching, Research, and Study](#)
Drafted by members of the VRA's Intellectual Property Rights Committee, this statement draws significantly on the guidance and expertise of the VRA's Legal Advisory Committee members. The aim of this document is to provide general guidance to educational and scholarly users of images - and to others who help facilitate those educational and scholarly uses - so that they can rely on fair use with greater certainty when employing these practices and principles. (*Visual Resources Association*)
- [Code of Best Practices in Fair Use for the Visual Arts](#)
Written by the College Art Association, this code is based on a consensus of professionals in the visual arts who use copyrighted images, texts, and other materials in their creative and scholarly work and who, through discussion groups, identified best practices for using such materials. They included art and architectural historians, artists, designers, curators, museum directors, educators, rights and reproduction officers, and editors at scholarly publishers and journals. (*College Art Association*)

Music

- [Best Practices in the Fair Use of Copyrighted Materials in Music Scholarship](#)
Written over a period of several years by an ad hoc committee of the AMS Council, and formally adopted by the Board of Directors, this code of best practices identifies eight situations that represent the AMS's current consensus about acceptable practices for the fair use of copyrighted materials in relation to music scholarship. This includes guidance in the use of printed music, lyrics, musical recordings, and transcriptions of recordings or live performances. (*American Musicological Society*)

3.0 Library Services and Copyright

31. Interlibrary Loan

General Information

The Bentley University Library provides interlibrary loan borrowing services to current students, staff and faculty of Bentley University to support the teaching, research and service missions of the University by providing access to material not present in the Library's collections. Bentley University Library also provides interlibrary loan lending services to other libraries.

Materials may be copied and distributed through interlibrary loan when they are:

- in the public domain; or
- used with permission from the copyright holder; or
- used under the provisions of a contract or license agreement, noting that agreements may differ from, and often take precedence over, what is allowed under copyright law; or
- used under the provisions of Library Copying, [U.S. Copyright Act, 17 U.S.C. Section 108](#) or, to the extent possible for University-related instructional or scholarly purposes, under [Fair Use, 17 U.S.C. Section 107](#), as determined using a case-by-case four-factor analysis.

The Library retains the right to refuse interlibrary loan requests on the basis of law-related or administrative concerns.

The following standards will be applied when copying copyrighted materials for interlibrary loan services under the provisions of Library Copying (Section 108) and, when appropriate, Fair Use (Section 107).

User Responsibilities

- Users should request copies of copyrighted works only to serve personal study, scholarship, or research needs.
- Users should request only the amount of material needed.
- Copies of copyrighted materials made available through interlibrary loan services become the property of the user and should not be reproduced for further distribution under most circumstances.*

Library Responsibilities – Borrowing Services

- The library will not request and distribute copies of copyrighted works if it has notice that the copy will be used for anything other than private study, scholarship, or research purposes.
- Library staff will determine appropriate limits on materials to be distributed, and will not knowingly provide to a patron more than a) a single copy of any item, under most circumstances;* and b) one article or other contribution to a copyrighted collection or periodical issue, or a small part of any other copyrighted work, under most circumstances.* When necessary, the library will consult with the patron in making these determinations.
- The library will not request and receive interlibrary loan copies for distribution in such quantities so as to result, in purpose or effect, in substitution for a subscription to or purchase of

such work. Relevant guidelines, such as [CONTU](#) (U.S. National Commission on New Technological Uses of Copyrighted Works), may be applied to help the library determine and operate within appropriate limits.

- The library, under most circumstances,* will not accept requests to copy musical works, pictorial, graphic, or sculptural works, motion pictures or other audiovisual works. In response to a request to copy an entire work or substantial part of a work, the library will conduct a reasonable investigation to conclude that a copy cannot be obtained at a fair market price.
- Library staff will determine and indicate copyright compliance on all requests transmitted for interlibrary borrowing. In doing so, library staff will indicate either CCL-Conforms to the Copyright Law, or CCG-Conforms to the CONTU Copyright Guidelines.
- A Notice of Copyright will be posted where requests are received and displayed on all request forms.

Library Responsibilities – Lending Services

- The library will not make and distribute copies of copyrighted works if it has notice that the copy will be used for anything other than private study, scholarship, or research purposes.
- Determination of overall copyright compliance for requests from other libraries is the responsibility of the requesting library. The library will only fulfill requests that indicate copyright compliance (either CCG-Conforms to the CONTU Copyright Guidelines, or CCL-Conforms to the Copyright Law).
- Copies made will display a notice stating that the work may be protected by copyright and, when available, the notice of copyright that appears on the original work.

Notes:

* Exceptions may include qualifying uses for University-related instructional or scholarly purposes, under fair use.

3.2 Internal Document Delivery Services

General Information

The Bentley University Library provides document delivery services to current faculty and distance learners of Bentley University. The primary purpose is to support the teaching, research, and service missions of the University by providing access to material owned in the Library's collections.

Materials may be copied and distributed through interlibrary loan when they are:

- in the public domain; or
- used with permission from the copyright holder; or
- used under the provisions of a contract or license agreement, noting that agreements may differ from, and often take precedence over, what is allowed under copyright law; or
- used under the provisions of Library Copying, [U.S. Copyright Act, 17 U.S.C. Section 108](#) or, to the extent possible for University-related instructional or scholarly purposes, under [Fair Use, 17 U.S.C. Section 107](#), as determined using a case-by-case four-factor analysis.

The Library retains the right to refuse document delivery requests on the basis of law-related or administrative concerns.

The following standards will be applied when copying copyrighted materials for internal document delivery services under the provisions of Library Copying (Section 108) and, when appropriate, Fair Use (Section 107).

User Responsibilities

- Users should request copies of copyrighted works only to serve personal study, scholarship, or research needs.
- Users should request only the amount of material needed.
- Copies of copyrighted materials made available through internal document delivery services become the property of the user and should not be reproduced for further distribution under most circumstances.*

Library Responsibilities

- The library will not make and distribute copies of copyrighted works if it has notice that the copy will be used for anything other than private study, scholarship, or research purposes.
- Copying activities will be conducted without any purpose of direct or indirect commercial advantage.
- Library staff will determine appropriate limits on materials to be copied and distributed, and will not knowingly provide to a patron more than a) a single copy of any item, under most circumstances;* and b) one article or other contribution to a copyrighted collection or periodical issue, or a small part of any other copyrighted work, under most circumstances.* The library will consult the patron in making these determinations when necessary.
- The library, under most circumstances,* will not copy musical works; pictorial, graphic, or sculptural works; or motion pictures or audiovisual works, with the exception of audiovisual works dealing with news and pictures and graphics published as illustrations, diagrams, or

similar adjuncts to works that can be copied (e.g. if an article can be copied, then the illustration or diagram in the article can also be copied).

- In response to a request to copy an entire work or substantial part of a work, the library will conduct a reasonable investigation to conclude that a copy cannot be obtained at a fair market price.
- Copies made will display a notice stating that the work may be protected by copyright and, when available, the notice of copyright that appears on the original work.
- A Notice of Copyright will also be posted where requests are received and displayed on all request forms.

Notes:

* Exceptions may include qualifying uses for University-related instructional or scholarly purposes, under fair use.

3.3 Printers, Photocopiers, and Scanners

U.S. copyright law governs the making of photocopies or other reproductions of copyrighted material. Under conditions specified in the law, the photocopy or reproduction, including any digital surrogate, is not to be used for any purpose other than private study, scholarship, or research. If a user makes, or later, uses, a photocopy or reproduction for purposes in excess of [fair use](#), that user may be liable for copyright infringement. Therefore, it is recommended that fair use be applied to any and all reproduction of copyrighted material.

4.0 Teaching and Copyright

Instruction often involves the reproduction of copyrighted materials in course handouts, packets, multimedia presentations, course reserves, and course/instructor web sites. Instructors also create new works for teaching purposes that are in turn protected by copyright.

In deciding whether it is permissible to reproduce a copyrighted work for use in teaching, the instructor should determine whether the intended use qualifies as fair use (section II), is allowed under another legal exception, or if the work is available under a license agreement. If not, the instructor should seek permission to use it or seek alternative resources.

4.1 Classroom Handouts and Coursepacks

Classroom Handouts

Instructors may legally distribute copyrighted material to students in a class under certain circumstances as outlined in the Fair Use doctrine and Section 110 of the U.S. Copyright Law.

Coursepacks

A course pack is a compilation of various reproduced copyrighted works (e.g., articles from journals, chapters from textbooks, and business cases) that an instructor assembles, and that students purchase at the campus bookstore. The Bentley University Bookstore works with an outside vendor to create custom course packs, with the vendor obtaining the necessary permissions to create and reproduce printed course packs for sale at the Bookstore. Obtaining permissions can take several weeks, and copyrights must be cleared or renewed each semester. For details and contact information, see [Create Coursepacks](#).

4.2 Library Course Reserves

Bentley University Library supports instruction at Bentley University through the availability of course reserves and other collection access services. The primary function of these services is to ensure that students and teachers have timely and equitable access to course-related library resources.

Copyrighted materials made available via course reserve, either in print in the library or digitized on Blackboard, are for use in class, related course study outside of class, and course research. The use of copyrighted materials in all formats, including the creation, online delivery, and use of digital copies of copyrighted materials submitted for course reserve, must be in compliance with U.S. copyright law and this policy.

Materials may be copied and made available for course reserves when they are:

- in the public domain; or
- used with permission from the copyright holder; or
- used under the provisions of a contract or license agreement, noting that agreements may differ from, and often take precedence over, what is allowed under copyright law; or
- used under the provision of Fair Use Copyright Act, 17 U.S.C. Section 107, as determined using a case-by-case four-factor analysis.

Bentley University Library retains the right to refuse any request to place materials on reserve, or to remove materials already on reserve, on the basis of law-related or administrative concerns. Alternative arrangements will be investigated to bring any declined request into compliance with copyright law.

The following standards, adapted and expanded from the Association of Research Libraries' (ARL) 2012 [Code of Best Practices in Fair Use for Academic and Research Libraries](#), will be applied when copying copyrighted works for course reserves under the provisions of [Fair Use](#) (Section 107). This includes, but is not limited to, musical works (scores, lyrics, recorded performances), spoken word audio or other audiovisual recordings.

Instructor Responsibilities

- All materials submitted by instructors must support course-related teaching, scholarship, or research and must be, or originate from, a lawfully obtained copy.
- Closer scrutiny will be applied to uses of content created and marketed primarily for use in courses (e.g., a textbook, workbook, or anthology designed for the course).
- When reproducing copyrighted materials, only the amount needed to accomplish the specific pedagogical purpose should be copied.

Student Responsibilities

- All materials placed on course reserves are to be used solely for non-commercial educational purposes and in support of the course(s) for which they are designated.
- Copyrighted materials made available through course reserves may be copied for teaching, scholarly, or research purposes, and should not be reproduced for further distribution.

Library Responsibilities

- The Library will provide information resources and guidance to instructors to assist them in evaluating the qualifications of a specific use as fair use.
- The library will provide information to students about their rights and responsibilities regarding their own use of course materials.
- Access to materials on course reserves will be limited to currently enrolled students and their instructors.
- Access to course material on electronic reserve will be restricted by password to currently enrolled students and their instructors.
- Whenever possible, library staff will provide a link to requested material through licensed databases, rather than scanning and posting material.
- Materials made available on electronic reserves will include a citation to the original source of publication and a notice stating that the work may be protected by copyright.
- Materials will be removed from course reserves when they are no longer required to support designated courses, in most cases at the conclusion of the semester or session for which the request was made.

Fair Use Analysis

Bentley University Library relies on the guiding principles of the [fair use doctrine](#), codified in Section 107 of the U. S. copyright law, in all of its course reserve practices, policies, and decisions. The following four-factor analysis, adapted from the 2003 "[Statement on Fair Use and Electronic Reserves](#)," by Georgia Harper and Peggy Hoon for the Association of College & Research Libraries (ACRL), outlines the library's general fair-use assessment regarding course reserves service. However, each individual course and related course reserve materials must also be independently evaluated to ensure that they fall under a reasonable determination of fair use.

First factor: The purpose and character of the use.

- Bentley University Library implements course reserve service in support of its nonprofit educational purposes.

Second factor: The nature of the work to be used.

- Course Reserves include text materials, both factual and creative.
- Course Reserves also serve the interests of faculty and students who study music, film, art, and images.
- Library staff will consider the character of all materials in the overall balancing of interests.

Third factor: The amount and substantiality of the portion used in relation to the materials as a whole.

- Library staff will consider the relationship of the amount and/or substantiality of the portion used to the whole of the copyright owner's work.
- Library staff will acknowledge that the amount that a faculty member assigns depends on many factors, such as relevance to the teaching objective and the overall amount of material assigned.

Fourth factor: The effect of the use on the market for or value of the work.

- Bentley University Library limits access to electronic course reserves to students enrolled in the particular course(s) for which the material is assigned, and to instructors and assistants for that course.
- Bentley University Library uses technology to restrict access to ensure that only registered students and other authorized individuals have access to electronic content.
- Bentley University Library terminates student and instructor access at the end of a semester during which the material is used.

4.3 Course Management Systems (Blackboard)

The use of course management systems such as Blackboard by instructors to make digitized course-related material available to students should be considered an extension of the physical classroom, thereby subject to the same fair use copyright laws that have governed traditional face-to-face course instruction. Until recently, the [1976 Agreement on Guidelines for Classroom Copying of Books and Periodicals](#) had been considered the benchmark for applying fair use to classroom instruction. However, a recent fair use court ruling has concluded that these guidelines are not legally binding and are not an appropriate standard for determining what does and does not qualify as a fair use. A careful fair use analysis must be applied whenever any copyrighted content is placed on Blackboard. The Association of Research Libraries, in its [2012 Code of Best Practices in Fair Use for Academic and Research Libraries](#), presents the following set of limitations to be considered when using copyrighted works on digital networks to further instructional purposes. These limitations are based upon an interpretation of fair use. They are not to be considered legally binding; rather, they should be used in informing responsible decisions regarding the digitizing and dissemination of copyrighted materials.

- Closer scrutiny should be applied to uses of content created and marketed primarily for use in courses such as the one at issue (e.g., a textbook, workbook, or anthology designed for the course). Use of more than a brief excerpt from such works on digital networks is unlikely to be transformative and therefore unlikely to be a fair use.
- The availability of materials should be coextensive with the duration of the course or other time-limited use (e.g., a research project) for which they have been made available at an instructor's discretion.
- Only eligible students and other qualified persons (e.g., professors' graduate assistants) should have access to materials.
- Materials should be made available only when and only to the extent that, there is a clear articulable nexus between the instructor's pedagogical purpose and the kind and amount of content involved.
- When appropriate, the number of students with simultaneous access to online materials may be limited.
- Students should also be given information about their rights and responsibilities regarding their own use of course materials.
- Full attribution, in a form satisfactory to scholars in the field, should be provided for each work included or excerpted.

4.4 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.

Classroom Showing

Classroom use or screening of a copyrighted video (VHS, DVD, Blu-ray) in a physical room on campus, but NOT a virtual or distance learning setting*, 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.

***For distance learning settings, see sections 4.7 and 4.8.**

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. For example, a film that is advertised and screened in an auditorium, student center, or outdoor setting would be considered a public performance. The screening of the film is not excused from the "public" designation simply 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. It is illegal to reformat or "rip" a DVD or VHS to stream digitally without expressed, written permission from the copyright holder and verification of a public performance license, particularly if such licensing and arrangements are readily available. The person showing the film is responsible for securing permission and paying any performance fees. For more information about public screenings, contact Matthew Van Sleet, Access Services Librarian at Bentley University Library.

Off-Air Recording

The following guidelines for off-air recording are excerpted from the House Report on piracy and counterfeiting amendments (H.R. 97-495, pages 8-9).

- 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 Bentley University.
- 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.

4.5 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

The Consortium of College and University Media Centers ("CCUMC") drafted guidelines on fair use as applied to educational uses of multimedia. These [guidelines](#) were submitted in a non-legislative report to the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U. S. House of Representatives, on September 27, 1996.

The following guidelines are not legally binding and they have not been widely endorsed by the academic community. These guidelines represent what certain publishers and producers of copyrighted materials view as fair uses of their materials. These limitations should not be viewed as the maximum allowable quantities as uses in excess of the guidelines may also be fair.

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.

4.6 Streaming Media

The use of Bentley Library licensed streaming media on a Blackboard course site is permissible if the proper licensing has been obtained for such use. One such example would be any content within a subscription database of streaming media. However, the reformatting of an existing DVD, CD, or VHS tape into a streaming file and posting that file on Blackboard is NOT covered by the Teach Act or other distance learning exceptions and is unlikely to be viewed as fair use. As with textual materials, short clips or excerpts favor fair use over streaming the entire content of an audio-visual production. It is recommended that *all* of the following conditions be applied when streaming media via Blackboard. Whenever there is doubt about a proposed use, it is *strongly* recommended that proper licensing or permission be obtained.

1. Limit access to enrolled students and for an appropriately limited time period.
2. Provide copyright information and appropriate attribution.
3. Provide access via streaming, rather than posting files.
4. Clips and short portions can be streamed under fair use.
5. Streaming an entire work warrants a more rigorous fair use analysis and requires proper licensing.

Fair Use Analysis for Course-Based Streaming of Video and Audio

The below analysis is based on [Community Practices in the Fair Use of Video in Libraries](#) (American Library Association Video Roundtable) and the [Code of Best Practices in Fair Use for Academic and Research Libraries](#) (Association of Research Libraries). These recommendations are based on an interpretation of fair use and should only be used to inform a cautious decision to provide streaming access to media. They are not intended as legal advice.

1. ***The purpose and character of the use:*** The use is noncommercial and educational, limited to the learning objectives of a specific course. The strongest fair use case would involve a transformational use of content: for example, a film might be presented in an online forum that includes faculty commentary and student frame analysis. Course-based streaming can also be transformative when content that was not originally intended for educational use (e.g. popular entertainment) is used as the object of commentary or criticism, or for purposes of illustration.
2. ***The nature of the copyrighted work:*** In general, the use of highly creative works, including motion pictures and music is less protected under fair use than the use of less creative, fact-based works. When creative, fictional works represent the content of a course (a John Ford film in a class devoted to the works of John Ford), however, this use is more supportable as a transformative, fair use.
3. ***The amount and substantiality of the portion used in relation to the copyrighted work as a whole:*** If the amount is closely tailored to learning objectives and represents less than the entire work, then the use is more likely to be considered fair. At times, however, use of an entire work is necessary to fulfill the pedagogical purpose. When an entire work is used, this weighs against fair use, but this factor should be balanced with the others.
4. ***The effect of the use upon the potential market for or value of the copyrighted work:*** In some cases, streaming an entire work may not have a significant effect on the market of the work. This is most likely to be the case when the use is highly transformative, the work is not specifically geared towards an educational market, and there is no applicable license available from the content provider. If content providers offer streaming versions appropriate to the needs of the

course as part of their catalog, the argument of market harm is stronger. This is particularly true if the content is provided by a vendor via a "value added" service that provides enhanced functionality for access and use of the work. Close scrutiny should be applied to content that was created and marketed primarily for use in courses or education. Use of more than a brief excerpt of such content is unlikely to be considered a fair use.

4.7 Distance Education and the TEACH Act

The TEACH Act (an amendment to the copyright law) broadens the scope of materials that can be transmitted digitally to support distance education and courses with a digital component.

The following displays and performances are allowed to be transmitted:

- Displays
 1. All types of materials may be displayed but only in an amount comparable to what is typically displayed in a live classroom setting.
- Performances
 1. Complete versions of nondramatic literary or musical works may be performed.
 2. Only *limited and reasonable portions* of any other work such as literary and musical works, audiovisual works, and sound recordings may be performed. This includes the use of feature films.

The following materials may not be transmitted under the distance education exemption:

1. Textbooks, course packs or other material in any media, copies or phonorecords which are typically purchased or acquired by students for their independent use and research that would be used in one or more class session.
2. Works that are marketed primarily for use in a digital classroom.

If the use does not qualify for the distance education exemption, then the fair use analysis should be applied. Permission to use the work is required, if none of the exemptions apply.

4.8 The TEACH Act (Technology, Education, and Copyright Harmonization Act, 2002)

The [TEACH Act](#) (Section 110(2)) of the U.S. copyright law) allows educators to perform or display copyrighted works in distance education environments, albeit under specified conditions. If you would like to show a video or display an image during your online class, you may want to consider whether that use is allowable under the TEACH Act.

Implementing the TEACH Act can be difficult because of its complexity and the many detailed requirements for instructors, technologists, and institutions.

Benefits of the TEACH Act

The TEACH Act allows instructors to do the following things, again, under specified conditions:

- Performances and displays of nearly all types of copyrighted works
- Transmission of digital materials to students at distant education locations
- Storage of copyrighted content for brief periods of time, such as that which occurs in the process of transmitting digital content
- Creating digital versions of print or analog works

Requirements of the TEACH Act

In order to take advantage of these benefits, instructors and institutions must meet certain policy requirements specified by the TEACH Act. Reasonable measures to assure that only enrolled students will have access to materials during the course of instruction must be in place before TEACH exemptions can be made. Consult this [checklist](#) for details. Below is a list of the primary requirements:

- The teaching must occur at an accredited, nonprofit educational institution.
- Only lawfully acquired copies may be used.
- Use is limited to performances and displays. The TEACH Act does not apply to materials that are for students' independent use and retention, such as textbooks or other readings.
- Use of materials must be within the context of "mediated instructional activities" analogous to the activities of a face-to-face class session.
- The materials to be used should not include those primarily marketed for the purposes of distance education (i.e. an electronic textbook or a multimedia tutorial).
- Only those students enrolled in the class should have access to the material.
- Reasonable efforts must be made to prevent students from distributing the material after viewing it.
- If a digital version of the work is already available, then an analog copy cannot be converted for educational use.
- Students must be informed that the materials they access are protected by copyright.
- The educational institution must have a policy on the use of copyrighted materials and provide informative resources for faculty advising them on their rights.

The requirements for complying with the TEACH Act are numerous. As opportunities for applying the TEACH Act are limited in scope, keep in mind that you may also consider applying fair use when using copyrighted works in distance education settings.

4.9 The Digital Millennium Copyright Act

[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 is 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.

Bentley University DMCA Procedures

The distribution of copyrighted material, including music, movies, videos, software, games and other kinds of copyright-protected and non-copyright-protected information for which you do not have the owner's permission, is a violation of the Digital Millennium Copyright Act (DMCA), University policy and criminal and civil laws. Violations of copyright law may result in temporary or permanent loss of access rights, fines, assignment of financial responsibility, disciplinary action up to and including immediate termination of employment, expulsion as a student, and legal action. Moreover, using these programs may contribute to an excessive consumption of bandwidth and create a potential security risk, all of which are violations of Bentley policy.

As part of Bentley's compliance with the DMCA and federal copyright law, we employ bandwidth shaping and traffic monitoring tools to combat DMCA violations. We also designate a DMCA Agent who responds to notices of copyright violations if they occur. Students will annually receive a letter detailing their rights and obligations under copyright law and Bentley's policies for use of Bentley University's computing networks. This letter does not detract from or override the student's obligations under the policy. When the University receives a notice alleging copyright infringement, Bentley's DMCA agent works with staff in Information Technology, Human Resources and Student Affairs to research and adequately address the infringement as follows:

1. The University DMCA Agent assesses the DMCA Notice to ensure that it conforms to the statutory requirements.
2. The University DMCA Agent requests that IT staff identify the individual responsible for possible copyright infringement using the Internet location of the allegedly infringing materials supplied in the notice.
3. If IT staff members are unable to identify the responsible individual, they will send the DMCA notice back to the DMCA Agent noting that it is not possible to identify the responsible individual.
4. When IT staff members identify the responsible individual as a student, they will forward that information to the DMCA Agent and the Dean of Student Affairs. The Dean of Student Affairs will address the infringement through Bentley's judicial process.

5. When IT staff identify the responsible individual as an employee, they will forward that information to the DMCA Agent and the Director of Human Resources. The Director of Human Resources will address the infringement in accordance with Bentley's Human Resources policies.

If the file-sharing and copyright infringement has been non-intentional, for example, as the result of computer compromise or "hacking", the student or employee will be instructed to work with Bentley's Help Desk to repair and secure the computer system. Bentley also encourages all students and employees to subscribe to legal downloading services to prevent violation of federal law and University policies. The RIAA (Recording Industry Association of America) [lists many of their approved music downloading services](#).

In order to maintain safe harbor under the DMCA, it is necessary that Bentley terminate Internet services of students, faculty, or staff who receive three DMCA notices that (a) conform to statutory requirements and (b) where no counter-notification has been filed.

Bentley's designated DMCA agent: Ted Robitaille, Chief Information Security Officer

5.0 Policies, Enforcement, Acknowledgements

5.1 Related University Policies

- [Academic](#) (undergraduate, graduate, doctoral programs)
- [Information Security and Data Privacy](#)
- [Computing and Network Use](#)

5.2 Enforcement and Penalties for Infringement

Substantial penalties can be imposed for infringement of a copyright. An injunction to stop the infringement is most likely to be the first action. Payment of actual damages for financial loss suffered by the copyright owner may be required. Statutory damages, for which no actual damages need be proved, may be assessed. If the court determines there is an infringement, it may award damages. In addition, Bentley University reserves the right to enforce violations of this policy. Failure to comply may result in suspension or termination of network services, appropriate disciplinary action, termination in the case of employees, or expulsion in the case of students.

5.3 Acknowledgements

Portions of this policy feature content that has been adapted with permission from the following institutions' policies or used under a [Creative Commons shared license](#) agreement:

- *New York University*
- *Purdue University*
- *Smith College*
- *University of Connecticut*
- *University of Minnesota*
- *Wellesley College*

5.4 Effective Date

This policy was approved by the Provost on 11/16/2015 and is effective immediately.