SECTION 1   PURPOSE

1.1 The Copyright Guidelines of Blue Ridge Community & Technical College serve to

- Provide guidance to faculty, staff, administrators, and students regarding the proper use of copyrighted materials under the federal Copyright Act (United States Code – Title 17);
- Balance properly and reasonably the rights of authors, composers, sponsors, and Blue Ridge Community & Technical College constituents; and
- Maintain and promote the academic freedom of Blue Ridge Community & Technical College faculty, staff, administrators, and students.

SECTION 2   DEFINITIONS

2.1 Copyright – the exclusive right to reproduce, distribute to the public (by sale, rental, or other method), perform, publicly display, revise, or prepare a derivative work from a product for artistic or intellectual effort, or to authorize another to perform any of these actions; also, the procedure by which one legally secures this right. Copyright exists from the time of creation and the length of time of protection depends on the nature of the work and when it was copyrighted. Certain actions can assist in enforcing protection of the rights of the copyrighted work. Such actions include placing an adequate copyright notice on the work, and registering copyright with the U.S. Copyright Office.

2.2 Copyright Notice– an appropriate copyright notice includes the word “Copyright”, or the symbol “©”, along with the year of creation and the name of the copyright owner.

2.3 Copyright License– written permission for use of copyrighted material, usually limited to a particular period of time and a specified type of use.

2.4 Copyrighted Material – may include any tangible work that is eligible for copyright under U.S. copyright law including (but not limited to) written works, lectures and other works prepared for oral and online delivery; musical and dramatic works; motion pictures, webpages, photographs, drawings, and other pictorial representations; sound recordings; computer programs, instructions, and other software. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries, even if presented in a copyrighted form.
2.5 Fair Use – a use of copyrighted material, for purposes of criticism, comment, news reporting, teaching, scholarship, or research that is not an infringement of copyrights. Demonstration of such a purpose is not, by itself, sufficient to sustain a claim that the use is fair. The four fair use factors must be reviewed to determine if the faculty, student, or staff member is in compliance with the spirit of the law.

- What is the purpose of the use?
- What is the nature of the work to be used?
- What amount of the work will be used?
- What effect will use have on the market for this work?

2.6 Infringement – exercise by another of any of the exclusive rights of a copyright owner except as explicitly authorized by law or the copyright owner or as encompassed by the concept of fair use. Federal law provides both civil and criminal penalties for infringement of copyright.

2.7 College Employee – any person hired as an employee of Blue Ridge Community & Technical College either full or part time. In addition, a student is a College Employee for purposes of this Copyright Procedure if the student receives support in the form of wages, salaries, tuition waivers, or stipend from funds administered by Blue Ridge Community & Technical College.

2.8 Public Domain – describes very few items that exist outside copyright protection; a work is said to be in the public domain if it is available for use by anyone at any time without explicit authorization (e.g., government publications). (Note: Works posted on the Internet enjoy copyright protection and are not necessarily in the public domain. Unless the author of a work clearly relinquishes copyright protection, a user must seek the author’s permission before copying, distributing or publishing.)

2.9 Publication – the public distribution of copies of a work (including the original) by sale or other transfer of ownership or by rental, lease, or lending; although public performance or display of a work does not itself constitute publication, the offer to distribute copies to a group of people for purposes of further distribution, public performance, or public display does constitute publication.

SECTION 3 GUIDELINES

3.1 It is the procedure of Blue Ridge Community & Technical College to follow the United States Copyright Law of 1976, as amended, (United States Code – Title 17, hereinafter referred to as “the Copyright Act”). Accordingly, all faculty, staff, administrators, and students of Blue Ridge Community & Technical College should follow these guidelines.

3.2 Only copyrighted materials are subject to the restrictions in this procedure. Uncopyrighted materials may be copied freely and without restriction; however, most works (except those authored by the United States Government) should be presumed to be copyright protected.
3.3 Copyrighted software may be copied without the copyright owner’s permission only in accordance with the Copyright Act. Section 117 of the Act permits making an archival back-up copy.

3.4 Copyrighted materials may be copied or otherwise used without the copyright owner’s permission, within reasonable bounds and for educational purposes only, where such copying constitutes “fair use” under the Copyright Act and/or complies with The Technology, Education, and Copyright Harmonization Act (TEACH Act) provisions for use of digital works in an online or distance learning environment.

3.5 Blue Ridge Community & Technical College is responsible for articulating this policy publicly.

SECTION 4 \hspace{1cm} TEACH ACT REQUIREMENTS

4.1 Compliance with TEACH Act Provisions for use of copyrighted works in digital formats through learning and/or course management systems is required by all employees.

4.2 The four fair use factors must be used to determine if content distributed in digital format is in compliance with TEACH Act provisions.

4.3 The material must be provided at the direction of or under the supervision of an instructor and must be an integral part of the course curriculum (i.e. not for entertainment purpose or as unrelated background content).

4.4 Faculty must provide notice to students that materials distributed in the course may be subject to copyright protection.

4.5 Technological measures must be employed so that –
   – To the extent technologically feasible, the transmission of material is limited to students currently enrolled in the course through password-restricted access or other similar measures.
   – The material is available to students for a limited duration no longer than the established term dates. Students may not be permitted to retain a permanent copy of the material for further dissemination or retain access to the content within the learning management system beyond the term dates.

SECTION 5 \hspace{1cm} INSTITUTIONAL PLEDGES

5.1 The college will ensure compliance to technological requirements described in the TEACH Act to secure copyrighted content.

5.2 The college will provide guidelines regarding copyright.

5.3 The college will provide information to faculty, staff, administrators, and students that accurately describes and promotes compliance with copyright law.

5.4 Copyright and fair use guidelines for faculty, students, administrators, and staff will provided by academic divisions and on appropriate pages of the college’s website.
5.5 The college will designate an employee to serve as a resource for other employees who have questions regarding interpretation of this policy, fair use guidelines, and the Copyright Act.

SECTION 6 COPYRIGHT NOTICES

6.1 College employees are encouraged to include the following notice of copyright with every distribution or reproduction of copyrighted materials (i.e. the course syllabus, and/or homepage of the learning management system):

Fair Use of Copyrighted Works: Please note that your instructor may use some works that are copyrighted by the publisher or original author. These works are provided to students under the Educational Fair Use provision of Title 17 of the US Code and are not to be shared with individuals who are not enrolled in this course or used for purposes outside of the course.

6.2 All Blue Ridge Community & Technical College-owned copy machines shall have posted a version of the following notice:

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material; the person using this equipment is liable for any infringement.

APPENDICES:
A: Four Fair Use Factors
B: Fair Use Checklist
C: Frequently Asked Questions for Faculty

DISTRIBUTION LIST:
President
Executive Assistant to the President
Vice President of Workforce & Engineering Technologies
Vice President of Instruction
Vice President of Business and Technology
Vice President of Enrollment Management
VP of Human Resources
Chief Financial Officer
VP of IT
Faculty Council Chair
Classified Staff Council Chair
Student Board Representative

__________________________________________ _____________________________
President      Date
APPENDIX A

Four Fair Use Factors (Section 107 of the Copyright Act)

The conditions of all four factors of fair use must be met prior to use of the copyrighted material in order to deem use of the material appropriate.

1. The purpose and character of the use (including commercial or nonprofit educational purposes).

In most cases, use of a copyrighted material by faculty or students is to support an educational activity in the traditional or virtual classroom; however, educational use of copyrighted works has been challenged in court. It is important to consider fair use when selecting materials to ensure that you are in compliance with copyright law.

2. The nature of the copyrighted work.

Classroom resources are most often selected by an instructor to support and strengthen educational activities, so this parameter is almost always met by instructors especially when it comes to reference tools including encyclopedias, maps, workbooks and manuals, and research articles. Use of factual works designed for an educational purpose falls under fair use.

3. The amount and substantiality of the portion used in relation to the copyright-protected work as a whole.

If an individual’s use of a copyrighted work exceeds 10 percent, the use may not fall under fair use; although this is simply a guideline, not a legal rule.

4. The effect of the use on the potential market for or value of the copyright-protected work.

To meet this parameter, an individual must review use of the copyrighted material to ensure that there is not a negative impact on the author’s ability to earn rewards for the original work.
APPENDIX B

Fair Use Checklist

Fair Use Factor #1: Purpose of the material

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teaching (including multiple copies for classroom use)</td>
<td>Commercial activity</td>
</tr>
<tr>
<td>Research</td>
<td>Profiting from the use</td>
</tr>
<tr>
<td>Scholarship</td>
<td>Entertainment</td>
</tr>
<tr>
<td>Nonprofit educational institution</td>
<td>Bad-faith behavior</td>
</tr>
<tr>
<td>Criticism</td>
<td>Denying credit to original author</td>
</tr>
<tr>
<td>Comment</td>
<td></td>
</tr>
<tr>
<td>News Reporting</td>
<td></td>
</tr>
<tr>
<td>Transformative of productive use (changes the work for new utility)</td>
<td></td>
</tr>
<tr>
<td>Restricted access (to students or other appropriate group)</td>
<td></td>
</tr>
<tr>
<td>Parody</td>
<td></td>
</tr>
</tbody>
</table>

Fair Use Factor #2: Nature of the material

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published work</td>
<td>Unpublished work</td>
</tr>
<tr>
<td>Factual or nonfiction based</td>
<td>Highly creative work (art, music, novels, films, plays)</td>
</tr>
<tr>
<td>Important to favored educational objectives</td>
<td>Fiction</td>
</tr>
</tbody>
</table>

Fair Use Factor #3: Amount of the material

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small quantity</td>
<td>Large portion or whole work is used</td>
</tr>
<tr>
<td>Portion used is not central or significant to entire work</td>
<td>Portion used is central to or is the “heart of the work.”</td>
</tr>
<tr>
<td>Amount is appropriate for favored educational purpose</td>
<td></td>
</tr>
</tbody>
</table>

Fair Use Factor #4: Effect of the material on the original creator

<table>
<thead>
<tr>
<th>Favoring Fair Use</th>
<th>Opposing Fair Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>User owns lawfully purchased or acquired copy of original work</td>
<td>Could replace sale of copyrighted work</td>
</tr>
<tr>
<td>One or few copies made</td>
<td>Significantly impairs market or potential market for copyrighted work or derivative</td>
</tr>
<tr>
<td>No significant effect on the market or potential market for copyrighted work</td>
<td>Reasonably available licensing mechanism for use of the copyrighted work</td>
</tr>
<tr>
<td>No similar product marketed by the copyright holder</td>
<td></td>
</tr>
<tr>
<td>Lack of licensing mechanism</td>
<td>Affordable permission available for using work</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Numerous copies made</td>
</tr>
<tr>
<td></td>
<td>User has made it accessible on the web or in other public forum</td>
</tr>
<tr>
<td></td>
<td>Repeated or long-term use</td>
</tr>
</tbody>
</table>

Source: The Fair Use Checklist is used under a creative commons license. The creators of the checklist are Kenneth D. Crews, Columbia University, and Dwayne K. Butler, University of Louisville.
APPENDIX C

Frequently Asked Questions for Faculty

A. QUESTIONS FOR THE FACE-TO-FACE CLASSROOM

1. How do I know if the work I want to use is copyrighted?

The safe bet or default assumption is that everything you are likely to use is copyrighted, unless it’s really old or produced by the US government. A copyrighted work does not need to be registered, published, or have a copyright notice on it. Copyright has expired for works published in the US before 1923 and, therefore, they are in the public domain.

This does not necessarily mean that you need permission to use it for teaching.

Also, providing a URL or linking to a work is always an option. The copyright law never precludes you from linking to a copyrighted work on a legitimate website.

2. What if I got the work from a website that
   — didn’t have a copyright notice?
   — said everything on it was public domain?
   — said I could use it for teaching?

Web sites vary wildly in terms of quality, authenticity, validity, and accountability. You will have to judge whether or not a site trustworthy.

Fair use is the only copyright provision that allows you to make a copy or distribute a copyrighted work that you find on a websites. In order to lawfully make use of such works, without obtaining the permission of the copyright holder, you must decide whether your use is a fair use. If you’re not sure, direct students to a link to the work.

3. What if a student created the work?

Students hold the copyright to the works they create, such as their papers, projects, and theses. If you wish to use their work, absent any relevant college policy, you will have to treat it like any other copyrighted work and ask for their permission.

4. Many copyrighted works are accessed through a campus license that can override copyright. How do I know if the work I want to use is covered by such a license?

You are most likely to encounter licensed works via our campus’ subscriptions to electronic journals and databases. Also, libraries vigorously negotiate licenses for electronic materials and are usually successful in getting the rights you need to use the works in your teaching. However, if you have a specific concern, contact the library.
You may also encounter works governed by licenses that specifically grant rights to use them, such as the Creative Commons model. Using a Creative Commons notice, creators specify the rights conveyed to users such as to copy, distribute, display, and perform the work (provided attribution is given).

You can learn more about Creative Commons at [http://www.creativecommons.org](http://www.creativecommons.org).

5. The work I want to use in class is copyrighted and I don’t have a license to use it. Does the copyright law grant me any specific rights to use it in a traditional classroom setting?

Yes. Section 110(1) of the copyright law makes special provision for displaying images, playing motion pictures or sound recordings, or performing works in classes.

You may display or perform a work in your class without obtaining permission when your use is
— for instructional purposes;
— in face-to-face teaching; and
— at a nonprofit educational institution.

6. Can I show part or all of a copyrighted movie in my classroom? And does it matter if I’m
— using my own copy?
— using the library’s copy?
— using a copy I rented from a store?
— using a copy I taped from TV?

In order to fit within the 110(1) exemption, the copy, whoever it belongs to, must have been “lawfully” made, not a bootlegged or pirated copy.

7. The copy I have is VHS and is getting worn out. Can I
— digitize it and show that?
— ask the library to digitize either my copy or theirs for showing in class?

There is nothing in section 110(1) that addresses “reproduction” which is what migrating your VHS copy to digital format would be. In order for you to digitize your VHS you would have to rely on fair use, which may justify digitizing portions of the work, but probably not the entire movie. Instead, consider buying it (or ask your department to buy it) and you can show that.

8. Can I display a copyrighted picture, image, graph, chart, text, etc. to my class?

Yes, you may display these kinds of copyrighted works in your class. For works found on the Internet, consider accessing the work using a projection of the site during class.
9. *Can I copy a chapter or article as a handout for my lecture?*

You may be able to make such handouts, but you must turn to fair use for your answer. Also, remember that copyright law never restricts you from directing your students to a link for a copyrighted work.

10. *What is fair use and when would I need to rely on it for my traditional classroom uses?*

Fair use is a very important provision of the law for educators that allows limited use of copyrighted material without requiring permission from the copyright holder. Consideration of all four factors of fair use is required, although all factors do not have to be in favor of a use to make it a fair one.

In the face-to-face classroom setting, you will usually need to consider fair use when you are reproducing material to hand out copies.

11. *What if a work is out of print? Is that the same as not copyrighted?*

“Out of print” is not the same as not copyrighted. An out of print work may still be protected by copyright and should be approached the same as a work still in print.

**B. QUESTIONS FOR THE ONLINE CLASSROOM**

1. *How do I know if the work I want to use is copyrighted?*

The safe bet or default assumption is that everything you are likely to use is copyrighted, unless it’s really old or produced by the US government. A copyrighted work does not need to be registered, published, or have a copyright notice on it. Copyright has expired for works published in the US before 1923 and, therefore, they are in the public domain.

This does not necessarily mean that you need permission to use it for teaching.

Also, providing a URL or linking to a work is always an option. The copyright law never precludes you from linking to a copyrighted work on a legitimate website.

2. *What if I got the work from a website that*
   — didn’t have a copyright notice?
   — said everything on it was public domain?
   — said I could use it for teaching?

Web sites vary wildly in terms of quality, authenticity, validity, and accountability. You will have to judge whether or not a site trustworthy.
Fair use is the only copyright provision that allows you to make a copy or distribute a copyrighted work that you find on a websites. In order to lawfully make use of such works, without obtaining the permission of the copyright holder, you must decide whether your use is a fair use. If you’re not sure, direct students to a link to the work.

3. **What if a student created the work?**

Students hold the copyright to the works they create, such as their papers, projects, and theses. If you wish to use their work, absent any relevant college policy, you will have to treat it like any other copyrighted work and ask for their permission.

4. **Many copyrighted works are accessed through a campus license that can override copyright. How do I know if the work I want to use is covered by such a license?**

You are most likely to encounter licensed works via our campus’ subscriptions to electronic journals and databases. Also, libraries vigorously negotiate licenses for electronic materials and are usually successful in getting the rights you need to use the works in your teaching. However, if you have a specific concern, contact the library.

In an online class, your students will be “authorized users” under a campus license as long as access to your course is restricted to only those students who are enrolled. This way, your class does not become a portal for the rest of the world to access your library’s licensed resources.

You may also encounter works governed by licenses that specifically grant rights to use them, such as the Creative Commons model. Using a Creative Commons notice, creators specify the rights conveyed to users such as to copy, distribute, display, and perform the work (provided attribution is given).

You can learn more about Creative Commons at [http://www.creativecommons.org](http://www.creativecommons.org).

5. **The work I want to use in my online class is copyrighted and I don’t have a license to use it. Are there any specific provisions of the copyright law that apply to online classroom use?**

Yes, the TEACH Act specifically applies to displaying images, playing motion pictures or sound recordings, or performing works in your online class.

Generally, to perform or display a work in your online class the work must be

— used under your supervision
— as part of systematic mediated instructional activities directly and materially related to the teaching content
— You must reasonably prevent your students from being able to save or print the work (i.e. control the “downstream” uses), and
— You must include a general copyright warning in your site or on your syllabus
6. Can I show part or all of a copyrighted movie?

In order to fit within the TEACH Act provision, you can use a “reasonable” portion of a movie or a piece of music. (Note: this differs from the face-to-face classroom where you may play the entire work.) The currently acceptable “downstream” control is to use streaming technology. The copy you excerpt from must be lawfully made.

7. Can I display a copyrighted picture, image, graph, or chart in my online class?

Yes, as long you comply with the general requirements listed above.

8. Can I post journal articles or book chapters?

The TEACH Act does not authorize posting scanned journal articles, book chapters, and other large chunks of a text if a digital version is available. For this type and amount of material, you should consider linking to the digital version, asking for permission, or evaluating your use using the four factors of fair use.

9. What if I want my students to be able to print everything on the course Web site?

Many professors are unhappy with the downstream control requirements because they want their student to be able to print materials from the course. If this is the case, the TEACH Act becomes inapplicable and you must fall back on linking, asking permission, or fair use.

10. What are “mediated instructional activities” (as defined in the TEACH Act)?

Mediated instructional activities are activities that use works
  — as an integral part of the class experience
  — under the control of the instructor
  — in a manner analogous to live classroom settings.

11. What is fair use and when would I need to rely on it for my online classroom uses?

Fair use is a very important provision of the law for educators that allows limited use of copyrighted material without requiring permission from the copyright holder. Consideration of all four factors of fair use is required, although all factors do not have to be in favor of a use to make it a fair one. In online classroom setting, you will usually need to consider fair use when you do not qualify under the TEACH Act and when linking is not an option.