

Use of Copyrighted Materials and Intellectual Property policies have been extracted from the 2012 Victoria College Employee Handbook

7.10 Use of Copyrighted Materials

- **Exclusive Rights**
Employees of the College shall comply with the provisions of the United States Copyright Law. Subject to certain specific exceptions, as stated below, the owner of a copyright has the exclusive rights to reproduce, distribute, perform, or display the copyrighted work or to authorize such reproduction, distribution, performance, or display by others.
- **Fair Use**
An exception to the exclusive right enjoyed by copyright owners is the doctrine of fair use. The fair use of a copyrighted work for purposes of teaching scholarship or research is not an infringement of copyright.

The following factors shall be considered in determining fair use:

- The purpose and character of the use including whether the use is a commercial nature or for non-profit educational purpose;
- The nature of the copyrighted work;
- The amount of importance of the portion used in relation to the copyrighted work as a whole; and
- The effect of the use upon the potential market for or value of the copyrighted work.
- **Performances**
A further exception shall be performance or display of a work by instructor or students in the course of face-to-face teaching activities in a classroom or other similar place devoted to instruction.
- **Guidelines**
Employees who wish to use copyrighted material shall follow guidelines set forth below. These guidelines establish a minimum guaranteed fair use, not a maximum. Any use that falls within these guidelines is a fair use; any use that exceeds these guidelines shall be judged by the four factors stated above and may be subject to challenge. There may be instances in which copying does not fall within these guidelines but that would be permissible under the criteria of fair use. Ultimately, any determination regarding whether a use that exceeds the guidelines is a fair use shall rest with an appropriate court of law.
- **Books and Periodicals**

Copies
Instructors may make or have made a **single copy** of any of the following for use in scholarly research, teaching, or preparation to teach a class:
 - A chapter from a book;

- An article from a periodical or newspaper;
- A short story, short essay, or short poem, whether or not from a collective work; or
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

Multiple copies, not to exceed one copy per student in a course, may be made by or for the instructor for classroom use or discussion provided that

- The copying meets the tests of brevity and spontaneity as defined below;
- The copying meets the cumulative effect test as defined below; and
- Each copy includes a notice of copyright.

- Definitions

Brevity depends on the type of material being copied:

- A complete poem may be copied if shorter than 250 words and if printed on not more than two pages;
- An excerpt of not more than 250 words may be copied from a longer poem;
- A complete article, story, or essay shorter than 2,500 words may be copied;
- A 500 - 1,000 word excerpt from any prose work or 10% of the entire work, whichever is shorter, may be copied; or
- One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue may be copied.

Each of the numerical limits stated with regard to poetry and prose may be expanded to permit the completion of an unfinished line of poetry or an unfinished paragraph of prose.

Certain works in poetry, prose, or "poetic prose" that often combine language with illustrations and that are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Even though they fall within the numerical limits for prose, such "special" works may not be reproduced in their entirety; however, an excerpt of not more than two published pages that contains not more than 10% of the words in the text may be reproduced.

Spontaneity is as follows:

- The copying is at the request and inspiration of an individual instructor; and/or
- The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to request for permission.

Cumulative Effect is as follows:

- The copying of the material is for only one course in the school in which the copies are made;
- Not more than one complete short poem, article, story, or essay or two excerpts may be copied from the same author;
- Not more than three items from the same collective work or periodical volume may be copied during one class term; and

- Instructors may make copies for their entire class no more than nine times during one term.

The limitation regarding the amount that may be copied during one class term shall not apply to current news periodicals, newspapers, and current news section, or other periodicals.

- Prohibitions

Notwithstanding any of the foregoing guidelines, the following shall be prohibited:

- Copying shall not be used to create or replace or substitute for anthologies, compilations, or collective works. This prohibition against replacement or substitution applies whether copies of various works or excerpts are accumulated or reproduced and used separately.
- No copies shall be made of or from works intended to be "consumable" in the course of study or teaching. These works include workbooks, exercises, standardized tests, test booklets, answer sheets, and like consumable material.
- Copying shall not: i. Substitute for the purchase of books, publisher's reprints, or periodicals; ii. Be directed by higher authority; or iii. Be repeated with respect to the same item by the same instructor from term to term.
- No charge shall be made to the student beyond the actual cost of the photocopying.

- Music

Permissible uses of music shall be as follows:

- Emergency copying to replace purchased copies that for any reason are not available for an imminent performance, provided purchased replacement copies shall be substituted in due course.
- For academic purposes other than performance, multiple copies of excerpts of work may be made, provided that the excerpts do not comprise a part of the whole that would constitute a performable unit, such as a section, movement or aria, but in no case may more than 10% of the whole work be reproduced. The number of copies shall not exceed one copy per student.
For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) may be made by or for an instructor solely for the purpose of his or her scholarly research or in preparation to teach a class under either of the following conditions: i. The unit is confirmed by the copyright proprietor to be out of print; or ii. The unit is unavailable except in a larger work.
- Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or added if none exists.
- A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.
- A single copy of a sound recording, such as a tape, disc, or cassette or copyrighted music may be made from sound recordings

owned by the College or an individual instructor for the purpose of constructing exercises or examinations and may be retained by the College or individual instructor. This provision pertains only to the copyright of the music itself and not to any copyright that may exist in the sound recording.

- Prohibitions regarding the use of music are as follows:
 - Copying to create, replace, or substitute for anthologies, compilations, or collective works;
 - Copying of or from works intended to be “consumable” in the course of studying or teaching, such as workbooks, exercises, standardized tests, answer sheets, and like material
 - Copying for the purpose of performance, except as provided in the preceding section covering permissible uses of music, item 1;
 - Copy for the purpose of substituting for the purchase of music, except as provided in the preceding section covering permissible uses of music, items 1 and 2; and
 - Copying without inclusive of the copyright notice that appears on the printed copy.

- Broadcast Programs
Broadcast programs, including commercial and public television and radio, shall not be videotaped or tape recorded for reuse without permission, except within the following guidelines:
 - A broadcast program may be recorded off-air simultaneously with broadcast transmission and retained by the college for a period not to exceed the first 45 consecutive calendar days after date of recording. At the end of that retention period, off-air recordings shall be erased or destroyed
 - Off-air recordings may be used once by individual instructors in the course of relevant teaching activities and repeated once only when instructional reinforcement is necessary during the first ten consecutive school days within the 45-calendar-day retention period. "School days" are actual days of instruction, excluding examination periods.
 - Off-air recordings shall be made at the request of and used by individual instructors and shall not be regularly recorded in anticipation of requests. No broadcast program shall be recorded off-air more than once at the request of the same instructor, regardless of the number of times the program is broadcast.
 - A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of instructors under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording. All copies of off-air recording shall include the copyright notice on the broadcast program as recorded.
 - After the first ten consecutive school days, off-air recordings may be used up to the end of the 45-calendar-day retention period only to determine whether or not to include the broadcast program in the teaching curriculum and shall not be used in the College for student exhibition or any other non-evaluative purpose without authorization.
 - Off-air recordings need not be used in their entirety, but the recorded programs shall not be altered from their original content. Off-air recordings

shall not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

- Film, DVDS, and Videos

The Federal Copyright Act (Title 17, United States Code, Public Law 94-553, 90 Stat. 2541), places certain restrictions on the right to show/screen a copyrighted motion picture or other audiovisual work publicly, even if the exhibitor lawfully possesses, rents, or purchases the copyrighted work. Public Performance Rights (PPR) are the legal rights to publicly show a film, DVD, or video (media). Pursuant to College policy and federal law, a license to show the copyrighted work must be obtained from the copyright owner or his/her licensed agent who holds the exclusive right to show the work publicly. The license may contain specific stipulations.

Permissible use of film, DVDs and videos shall be as follows:

- Films may be shown without a license by the College for “face-to-face teaching activities” as “part of a regularly scheduled course.” “Reasonable and limited portions” of dramatic works may also be transmitted to students provided certain conditions are met (Section 110.1 and 110.2 of Copyright Act)
- Advertised or public showing of motion pictures and other audiovisual works may be shown only if a license is obtained, regardless of whether an admission fee is charged.
- Films, DVDs, and videos considered public domain may be shown without obtaining PPR.

Public Performance Rights (licenses) are required for all showings of copyrighted media to audiences outside of regular curriculum such as student club events, extracurricular sponsored events, general lectures, and film series.

Individuals or student organizations who violate this policy will be subject to discipline by the College up to and including disbanding of student organizations and expulsion of students.

8 Intellectual Property

The College has a responsibility for and an interest in the advancement of scientific knowledge and creative work that will enhance its educational and service missions and benefit the public it serves. The purpose of this policy is fourfold:

1. to encourage the development of Intellectual Property for the best interest of the public, the creator of the Intellectual Property, the College, and the research sponsor; and
2. to provide timely disclosure and protection of Intellectual Property whether by development, commercialization, or publication, or any combination thereof; and
3. to allow employees of the College maximum scientific and professional freedom with respect to the method of disclosure and publication of their findings, consistent with any contractual obligations of employment or sponsored research; and
4. to provide procedures for the protection of College Intellectual Property through patents, copyrights, and trademarks, and for the licensing of System Intellectual Property for commercial application, for the benefit of the public.

The Intellectual Property Policy is set forth in the belief that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for the College and its learning communities reasonable access to, and use of, the intellectual property for whose creation the College has provided assistance. For purposes of this policy, Intellectual Property will be collectively all forms of intellectual property including but not limited to inventions, copyrightable works, trademarks, and tangible research property.

The College supports the development, production, and dissemination of intellectual property by its employees.

8.1 Definition of Terms

When used herein, the term "copyright" shall be understood to mean that bundle of rights that protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

“Invention” includes a process, method, discovery, device, plant, composition of matter, or other fabrication that reasonably appears to qualify for protection under the United States patent law utility patent, plant

patent, design patent, whether or not actually patentable. An invention may be the product of a single inventor or a group of inventors who have collaborated on a project.

“Tangible research property” means tangible items produced in the course of research including such items as biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of tangible research property may be associated with one or more intangible properties, such as inventions, copyrightable works, and trademarks. An item of tangible research property may be the product of a single creator or a group of individuals who have collaborated on a project.

“Trademark” (including Service Mark) includes a distinctive word, design, or graphic symbol, or combination word and design, that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with plant varieties or computer programs.

"Works of authorship" (including computer programs) include, but are not limited to the following: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

"Tangible media" include but are not limited to books, periodicals, manuscripts, compact discs, films, tapes, and disks.

8.2 Applicability

This regulation is applicable to (i) all persons employed by the College; and (ii) any persons using the College facilities under the supervision of College personnel, including but not limited to visiting faculty, adjunct faculty, and students, unless special terms for management of the work of such individuals are negotiated by the College. College employees should not enter into intellectual property agreements related to outside employment, such as consulting or summer employment agreements, without affirmative notice to the prospective employer that the intellectual property rights of the College cannot be subordinated to a third party consulting or employment agreement.

8.3 Ownership

8.31 Copyrightable Works and Materials

Barring the exceptions listed below, copyrighted or copyrightable works and materials created, made, or originated by a College employee or student shall be the sole and exclusive property of the employee or student.

The employee shall be the sole owner of a copyright unless:

- The employee or student has transferred the copyright, in whole or in part to the College or the College has commissioned and paid the employee or student for the authorship of the work and/or material will be considered a work made for hire as it is outside the employee's or student's scope of employment. A transfer of the copyright shall be in the form of a written document signed by the employee or the student author assigning the copyright to the College. A work made for hire shall be in the form of a written document signed by the employee or the student author and an authorized representative of the College.
- The College has contributed to a "joint work" under this clause when it has contributed specialized services and facilities to the production of the work that goes beyond what is traditionally provided to the employees or student generally in the preparation of course materials. Provision of non-specialized facilities and services including, but not limited to, available computer hardware, software, delivery mechanisms, or College staff services shall not constitute creation of a "joint work." If the College wants to exert a claim of joint ownership, it shall do so by a written agreement signed by all parties, in advance, and in full conformance with other provisions of this agreement. Should a written agreement not be made before the initiation of work, the entire content of the work created until the date that such an agreement is made will be presumed to be the sole property of the employee(s) or student(s).
- If the employee has received a stipend or release time for the development of the copyrighted works and or materials, use of the works and/or materials by the employee shall not subject the College to a royalty payment
- The College shall retain ownership of copyrightable works and materials created as institutional purposes in the course of the creators' employment, including, but not limited to, simultaneous or sequential contributions over time by numerous faculty, staff, or students. For instance, work assigned to programmers is Institutional Work or "work for hire" as defined by law, as is software developed for College purposes by staff working collaboratively. Brochures, training programs, CD-ROMs, videos, and manuals for which staff members are hired to develop are other examples of Institutional Works, or work for hire. The College owns all rights, title, and interest in such Institutional Works. The College will permit the work for hire to be used for the author's portfolio provided that, in the case of collaborative works, the author's role is explicitly stated and all parties are credited for their contribution.

8.3.2 Use

Works and/or materials created for ordinary teaching use in the classroom and in department programs, such as syllabi, assignments, tests, and classroom lectures, or other presentations shall remain the property of the employee author, but the College shall be permitted to use such work and/or materials without the payment of a royalty to the employee(s) owning copyright for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for employee-authored syllabi and course descriptions. "Internal use" permitted by this provision includes but is not limited to the College's right to record classes for rebroadcast in connection with the Distance Education program and other programs of the College. This provision shall apply only to materials created while the employee(s) is/are employed by the College, and the College retains the right to use such material only so long as the employee(s) is/are employed by Victoria College.

Although employees retain ownership rights to works and/or materials created at the College even if receiving a stipend or release time to create the work and/or materials, the following restrictions apply to the use of works and materials developed. The employee(s) is not allowed to teach the same course at the College and at another institution during the same semester unless through the auspices of Virtual College of Texas or the employee has received written authorization from the President or designee. If the employee has been paid a stipend or given release time for the development of the material, then the College shall not be subject to royalty payments for a period of no fewer than eight (8) semesters or until the employee leaves the employment of the College, whichever is longer. The College does not have the right to allow another employee to use the material for instruction except in order to fulfill its eight semesters of royalty-free use in the event the developing employee leaves employment by the College

In an agreement transferring copyright for such works and/or materials to a publisher, employee authors are urged to provide rights for the College to use such works royalty-free for internal instructional, educational, and administrative purposes beyond the eight semesters mentioned above.

Authors of copyrightable materials that are not owned by the College, or any of its components, own the copyrights in their works and are free to publish them, register the copyright, and to receive any revenues which may result there from. However, before commercializing a copyrightable work or material that was created with the aid of software purchased by the college, the author must disclose to the Office of the President which software applications were used and prove that the author is in compliance with any restrictions specified by the software licenses involved. Much of the software used at the college is

licensed under educational, academic, or nonprofit use only restrictions. This might require that the author purchase a retail version of the software or other such measure.

8.4 Inventions

Inventors shall be permitted maximum freedom with respect to their inventions, consistent with any obligations to the College. All College employees are required to abide by their obligations and those of the College under research agreements with sponsors.

- An invention resulting from activities related to an individual's employment responsibilities and/or with support from College-administered funds, facilities, or personnel shall be owned by the College.
- An invention that is developed by an employee on his or her own time without College support or use of College facilities not available to the general public is not owned by the College.
- Ownership of an invention developed in the course of or resulting from research supported by a grant or contract with the federal government (or an agency thereof) or a nonprofit or for-profit nongovernmental entity shall be determined in accordance with the terms of the sponsored grant or contract, or in the absence of such terms, shall be owned by the College.
- Present and prospective employees of the College shall, upon request by the President to perfect intellectual property rights, execute an invention assignment agreement in a form prescribed by the President to set forth effectively the ownership and rights to inventions. Executed invention assignment agreements shall be maintained by the Office of the President.

8.5 Trademarks

In most situations, a trademark identifies an item of intellectual property, such as a computer program or a plant variety. In other situations, a trademark identifies an educational, service, public relations, research, or training program of the College. The College owns all right, title, and interest in trademarks related to an item of Intellectual Property owned by the College, or to a program of education, service, public relations, research, or training program of the College. All income from the licensing of a trademark shall belong to the College.

8.6 Tangible Research Property

The College owns all right, title and interest in tangible research property related to an individual's employment responsibilities and/or developed

with support from College-administered funds, facilities, equipment, or personnel.

8.7 Disclosure, Assignment, and Protection

All persons subject to this policy shall promptly disclose through their Dean or Program Director to the Office of the President any invention covered by this policy, including those made under sponsored research or cooperative arrangements.

All inventors shall execute appropriate assignment and/or other documents required to set forth effectively the ownership and rights to inventions.

The President will determine whether the College desires to commit funding to obtain protection for the invention and shall so notify the inventor of the decision.

In those instances where the inventor perceives that delay would jeopardize obtaining the appropriate protection for the invention, the inventor may request that the College expedite its decision as to whether or not it shall proceed to file a patent application or take other steps to obtain available protection.

8.8 License Agreements for Inventions

License agreements granting to a third party the right to use, develop, or otherwise commercialize College-owned inventions are encouraged. The Chief Financial Officer has primary responsibility for negotiating with parties having an interest in such activities, on behalf of and in close coordination with the President.

Final terms of a license agreement for a College-owned invention must be approved by the President, as well as the Board of Trustees. Any agreement to license or transfer ownership of College-owned inventions must be approved by the Board of Trustees.

8.9 Obligations to Sponsors

The Sponsored Programs Officer shall coordinate reporting requirements and other obligations to research sponsors regarding inventions developed under a research contract or grant, including but not limited to obligations to the US Government under 37CFR401.

8.10 Distribution of Any Funds Generated

8.10.1 Copyrightable Works and Materials

As sole copyright holder in most instances, the employee or student will hold sole rights to any financial benefit arising from royalties to the created work(s). During the employee's term of employment the College shall never be required to pay a royalty for materials generated during that term of employment.

Funds received by the employee or student and the College from the sale of copyrighted or copyrightable material owned jointly by the employee or student and the College shall be allocated and expended in accordance with the specific agreement herein provided, which will have been negotiated by the parties prior to the creation of the materials. In the event of multiple employee or student creators, the creators will determine the allocation of their individual shares when the work is first undertaken.

8.10.2 Inventions

All monetary proceeds from commercialization of College-owned inventions, including royalties, equity interests, and dividends, are the property of the College.

8.10.3 Dispute Resolution

Disputes over ownership of copyrightable or copyrighted material and its attendant rights will be decided by a committee appointed by the President in consultation with the Faculty Senate. The committee shall make an initial determination of what parties have rights and the basis and extent of those rights. The committee shall also make a determination on resolving competing employee or student claims to ownership when the parties cannot reach an agreement on their own.

The committee will review creations that the College may have rights to and make recommendations for the management, development, copyrighting, and exploitation. If the creators disagree with the determination of the committee, he/she/they may appeal to binding arbitration. The arbitrator shall be selected by mutual agreement of the parties; the arbitration shall be conducted in Victoria, Texas, or other location mutually agreed to by the parties; and the cost of the arbitration shall be borne equally by the parties involved.

8.11 Offers of Intellectual Property

If an individual chooses to offer to the College certain intellectual property in which the College has no claim, the College may accept ownership of the intellectual property provided that

- the individual makes the offer through one of the College departments as if the intellectual property had been created within the College;
- the individual agrees to all provisions (including distribution of income provisions) of College policy on Intellectual Property;
- the individual warrants that he or she owns all right, title and interest to the intellectual property and that to the best of his or her knowledge the intellectual property does not infringe upon any existing copyright or other legal rights.

8.12 Modification, Amendment, Termination of Policy

The College retains the right to, in its sole discretion, modify, amend, or terminate this policy at any time. This policy will apply Intellectual Property created while this policy is in effect.