

# Copyright in Research and Scholarship

Gail McMillan

[gailmac@vt.edu](mailto:gailmac@vt.edu)

Director, [Scholarly Communication](#)

University Libraries, Virginia Tech

May 1, 2015

Engineering Education Graduate Seminar, ENGE 5704

This work is licensed under a



[Creative Commons Attribution 4.0 International License.](https://creativecommons.org/licenses/by/4.0/)



# What is copyright?

- Copyright Law: *U.S. Code, Title 17*  
Section 102: original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be communicated
- **Copyright is automatic** (no © required)
- Copyright registration is **not required**



# Frame your copyright question

1. Is the work protected by copyright?
2. Is there a specific exception in copyright law that covers my use?
3. Is there a license that covers my use?
4. Is my use covered by fair use?
5. Do I need permission from the copyright owner for my use?



# What cannot be copyrighted?

- Ideas, procedures, and methods
- Titles, names, slogans
- Facts (common information)
- Data (e.g., phone numbers)
- Works in the public domain
- Unrecorded, unwritten, i.e., un“fixed” works



# What can be copyrighted?

- **Literary works: theses, dissertations**
- Musical works and accompanying lyrics
- Dramatic works
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works



# Who can own the copyright?

- Creators of original works
- Creators' assignees
- Employers: works for hire
  - Explicit, e.g., job description
  - Is the work employees do owned by VT?
    - <http://www.research.vt.edu/intellectual-property-virginia-tech>
    - <http://www.research.vt.edu/intellectual-property/who-owns-intellectual-property>



# VT Policy 13000

<http://www.policies.vt.edu/13000.pdf>

- **Traditional results of academic scholarship**
- Contributes to the “university's benefit by its creation and *by continued use by the university* in teaching, further development, and enhancement of the university's academic stature”
  - Presumption of ownership is to the author
    - unless there is explicit evidence that the work was specifically commissioned by the university
  - University's rights are limited to free (no cost) use in teaching, research, extension, **etc. in perpetuity.**



# VT Policy 13000

<http://www.policies.vt.edu/13000.pdf>

- **Novel results of research -- products, processes, machines, software, biological technology, etc.**
  - As a condition of employment or involvement in research or related activities using university resources, **the ownership is to the university**
  - Originator has a right to share in the benefits
  - *The University will not generally claim ownership of IP created by students if they used resources that are available to all students in the course.*  
(rev. April 22, 2015)





# Copyright holders control

- Reproduction
- Modification
- Distribution\*
- Public performance
- Public display

For a limited time



# Distributing someone else's work

## ■ Web/Internet

- Distribution
- Common mistakes

## ■ Learning Management Systems

- Copyright law hasn't kept pace
- Links
- Library's eReserves

[https://aqua.lib.vt.edu/reserve\\_form.php](https://aqua.lib.vt.edu/reserve_form.php)



# Public Domain: Intellectual property not owned or controlled

- It's well aged.

- 70 years after the creator passed on
- 95 years after the work-for-hire was published, or
- 120 years after the creation of the work-for-hire

- Tools to help

- <http://www.unc.edu/~unc1ng/public-d.html>

- <http://librarycopyright.net/resources/digitalslider/>

- US government documents

- Does not mean Internet/Web accessible



# Fair Use

- Before using someone else's work *without permission*, weigh **ALL 4 Fair Use FACTORS**.
  1. Purpose and character of use
  2. Nature of the work
  3. Amount and substantiality
  4. Effect
- Myth: It's OK because it's for educational purposes.



## FAIR USE: 1 of 4

### **Purpose and character of use**

- Commercial or educational use
- Profit or not
- Criticism, commentary, news reporting, teaching, scholarship, research
- Transformative, value added



## FAIR USE: 2 of 4

# Nature of the copyrighted work

- Worthy of (extensive) protection?
  - Not a quality judgment.
  - Is it legally protected by copyright?
- Character of the work?
  - Fact or fiction
    - Published facts weigh in favor of fair use
    - Unpublished creative expressions weigh in favor of seeking permission



FAIR USE: 3 of 4

## Amount and Substantiality

- Use only what is necessary
- Consider in relation to whole work
  - Quantity
  - Quality



## FAIR USE: 4 of 4

### Effect

- Will your use reduce the value of the original work?
- Harm to the market
  - Real
  - Potential





# Fair Use: *weigh all 4 factors*

Purpose/character, nature of the work, amount/substantiality, market effect

- Tools to help
  - [VT Fair Use Analyzer](#)
  - [ALA Fair Use Evaluator](#)
- 2 yes, 2 no? Assess the risk.
- Demonstrate that you acted in good faith.
  - Document the exemption.
  - Include with ETD for VT Graduate School



# Did the scales tip in favor of fair use?

- If not
  - Modify your use
  - Ask for permission
  - Use openly licensed materials
    - SherpaRoMEO: Publishers' policies
      - <http://www.sherpa.ac.uk/romeo/>
    - Creative Commons
      - <http://creativecommons.org>
      - Give notice that others may use your works — on conditions of your choice.

# Creative Commons

## Licenses in addition to copyright



### **Attribution**

Others can copy, distribute, display, perform and remix your work if they credit your name as requested by you



### **No Derivative Works**

Others can only copy, distribute, display or perform verbatim copies of your work



### **Share Alike**

Others can distribute your work only under a license identical to the one you have chosen for your work



### **Non-Commercial**

Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only.

# Finding CC licensed works

## ■ Google Advanced search

- [https://www.google.com/advanced\\_search](https://www.google.com/advanced_search) (scroll down to “usage rights”)

reading level:

no reading level displayed

file type:

any format

usage rights:

not filtered by license

not filtered by license

free to use or share

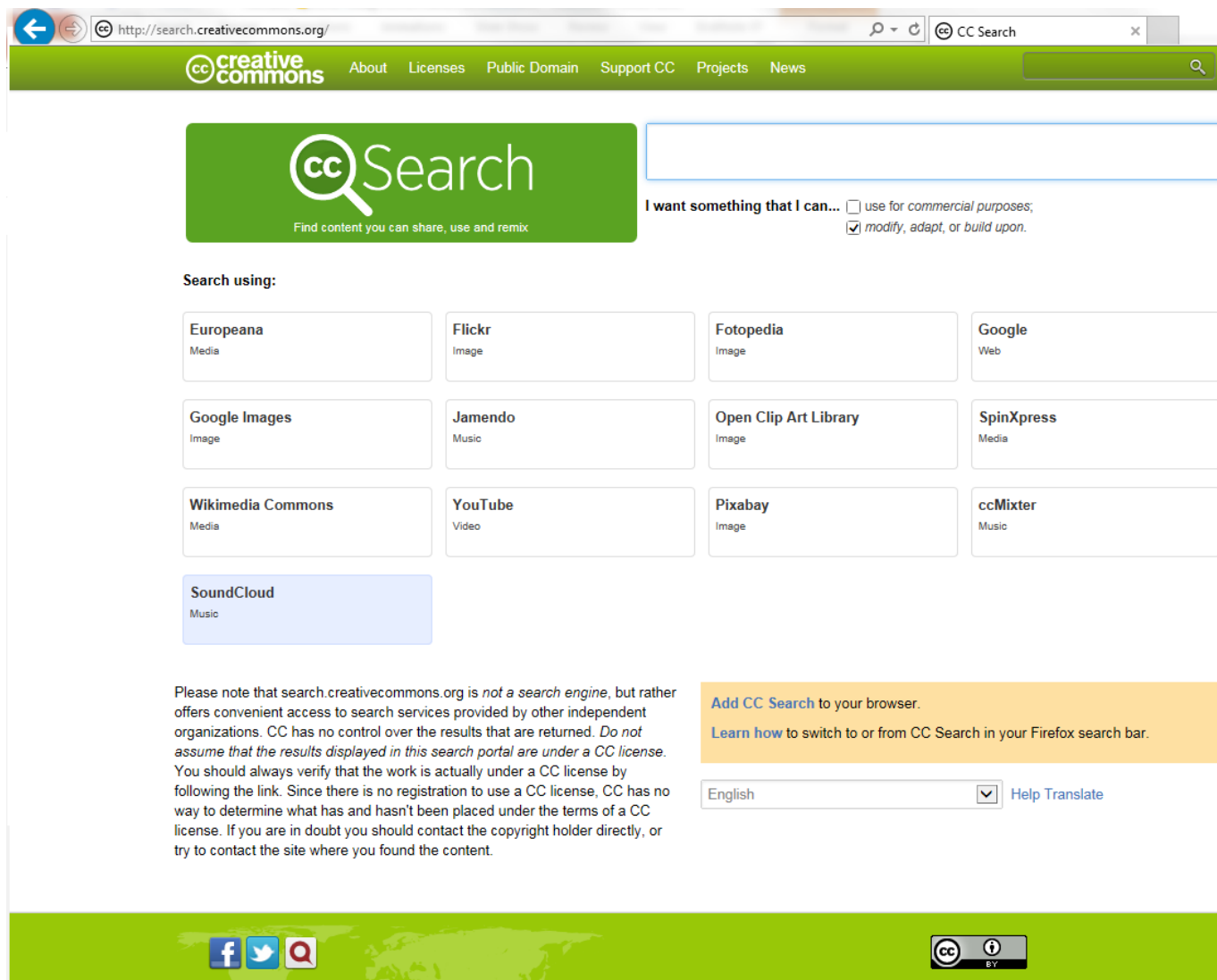
free to use or share, even commercially

free to use share or modify

free to use, share or modify, even commercially

- <https://support.google.com/websearch/answer/29508?hl>

# Finding CC licensed works



The screenshot shows the CC Search website interface. At the top, there is a navigation bar with the Creative Commons logo and links for About, Licenses, Public Domain, Support CC, Projects, and News. A search bar is located on the right side of the navigation bar. Below the navigation bar, there is a large green search box with the CC Search logo and the text "Find content you can share, use and remix". To the right of the search box, there is a checkbox for "use for commercial purposes" (unchecked) and a checked checkbox for "modify, adapt, or build upon". Below the search box, there is a section titled "Search using:" with a grid of buttons for various search engines: Europeana (Media), Flickr (Image), Fotopedia (Image), Google (Web), Google Images (Image), Jamendo (Music), Open Clip Art Library (Image), SpinXpress (Media), Wikimedia Commons (Media), YouTube (Video), Pixabay (Image), and ccMixer (Music). There is also a SoundCloud button (Music). Below the grid, there is a disclaimer: "Please note that search.creativecommons.org is *not a search engine*, but rather offers convenient access to search services provided by other independent organizations. CC has no control over the results that are returned. *Do not assume that the results displayed in this search portal are under a CC license.* You should always verify that the work is actually under a CC license by following the link. Since there is no registration to use a CC license, CC has no way to determine what has and hasn't been placed under the terms of a CC license. If you are in doubt you should contact the copyright holder directly, or try to contact the site where you found the content." To the right of the disclaimer, there is a yellow box with the text "Add CC Search to your browser." and a link "Learn how to switch to or from CC Search in your Firefox search bar." Below the disclaimer, there is a language dropdown menu set to "English" and a "Help Translate" link. At the bottom of the page, there are social media icons for Facebook, Twitter, and Google+, and a Creative Commons BY license logo.



# Sharing so your work can be found

- Local: VTechWorks (ETDs)

- <http://vtechworks.lib.vt.edu>

- MERLOT or OER Commons

- <http://www.merlot.org> <http://www.oercommons.org>

- Your discipline's sharing networks

- Sustainable Engineering Education Key Resources Repository (SEEKRR)

- <http://www.aimehq.org/resources/seekrr>

# Upload Your ETD

Sunday, March 17, 2013 -

GRADUATE EXAM LIST

March, 2013						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					01	02
03	04	05	06	07	08	09
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Exam requests submitted for

Scheduled Date	Location	Title	Entered	Updated	Status	
/2013, 4:00 PM	Eggleston Hall		02/05/2013	03/05/2013	ETD	view etd

Create Exam Request

First available exam date:  
03/28/2013

ETD Information - All fields are required

Title and Categorization

Thesis Title:

Abstract:

Keywords that describe your material  
(At least 1, comma-separated if more):  
Select at least one Proquest category:

Files

Please select the files containing your **COMPLETE** dissertation and supporting data and appendices files. The dissertation file must be in PDF format. If the **total size of the uploaded files exceeds 100 MB**, please upload just the dissertation file and contact the **VT Library** for instructions on submitting the rest of your files.

Dissertation file:

Select a file (PDF only)

Access Status:

Reason for withholding access:

For any release other than *immediate access*, the Graduate School requests that you name a proxy to cover cases such as if the student or committee signing this form becomes inaccessible. Any of the following people (indicated by their names) is authorized to serve as proxy for changes in availability. Submissions by any of these proxies signing are officially recognized just as if the student and full committee signed. For example, it is suggested that the committee chair be a proxy.

Name of proxy 1:

Name of proxy 2:

Copyright clearances obtained:

I hereby certify that, if appropriate, I have obtained and submitted with my ETD a written permission statement from the owner(s) of each third party copyrighted matter to be included in my thesis or dissertation, allowing distribution as specified above. I certify that the version I submitted is the same as that approved by my advisory committee.

Grant VT License:

I hereby grant to Virginia Tech and its agents the non-exclusive license to archive and make accessible, under the conditions specified above, my thesis or dissertation [in whole or in part in all forms of media], now or hereafter known. I retain all ownership rights to the copyright of the thesis or dissertation. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.



# ETD Author's Access Choices

## Worldwide Access

- Available to the public **immediately**
- VTechWorks: [vtechworks.lib.vt.edu](http://vtechworks.lib.vt.edu)

## VT-only

- Available only to current university community **for 1 Year**
- VTechWorks
- Off-campus access with VT PID/password

## Secured

- ETD held in a dark archive **for 1 year**
- NOTHING about your ETD is available
- After embargo period: publicly available in VTechWorks



# Copyright clearance obtained

- I certify that if necessary I obtained and submitted with my ETD copyright clearance (i.e., permission, fair use, public domain) of 3<sup>rd</sup> party copyrighted material included in my ETD, allowing the distribution I specified.
- I certify that the version of my ETD that I submitted is the same as that approved by my advisory committee.



## Grant VT License

- I grant VT a non-exclusive license to archive and make accessible, under the conditions I specified above, my ETD.
- I retain copyright of my ETD.
- I retain the right to use all or part of my ETD in future work (e.g., articles, book chapters, books, proceedings, etc.).



# Questions about VT Graduate School ETD Policies?

Janice Austin

Director, Graduate Admissions and Academic Progress

Virginia Tech Graduate School

540-231-8636

[jema@vt.edu](mailto:jema@vt.edu)



## Section I. License for Inclusion of the Work in UMI® Publishing Program.

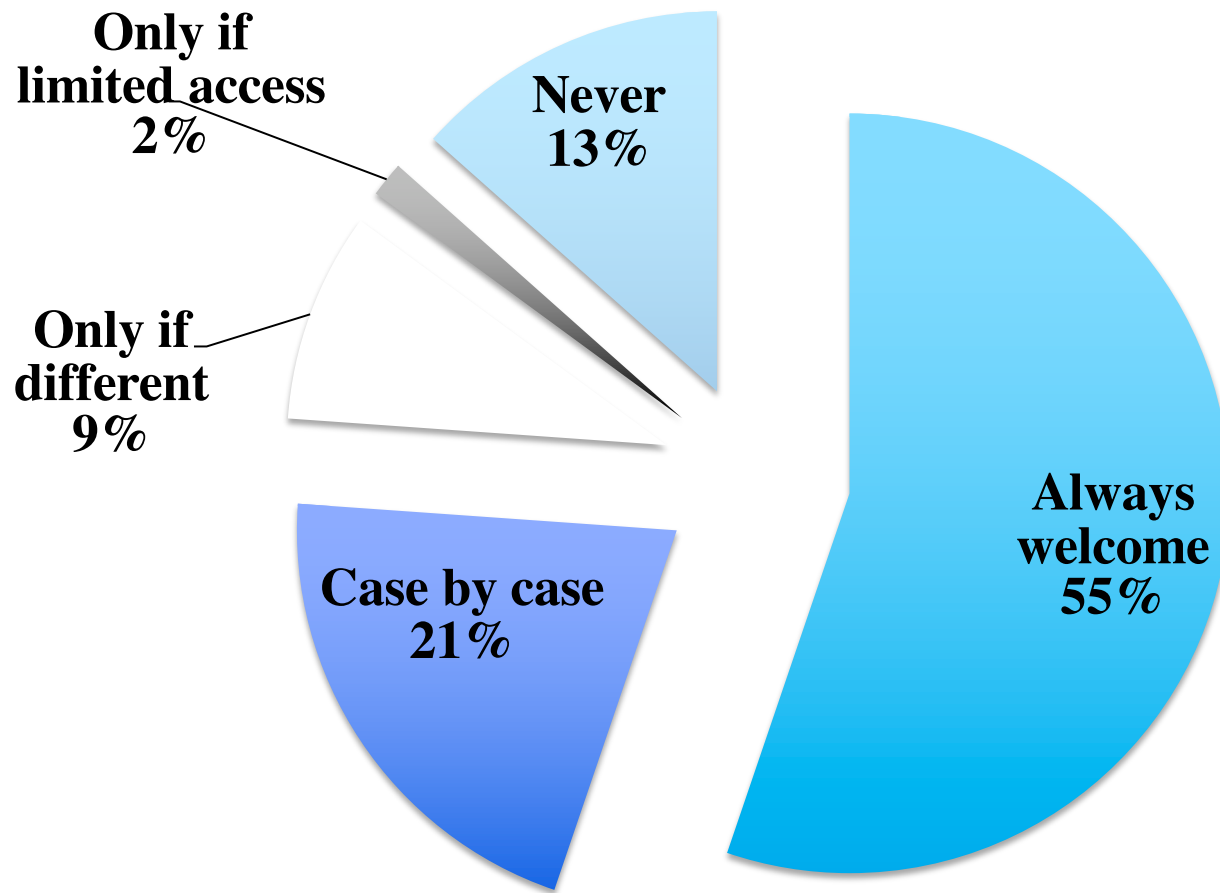
- Grant of Rights. Author hereby grants to ProQuest/UMI the **nonexclusive**, worldwide right to reproduce, distribute, display and transmit the Work (in whole or in part) in such tangible and electronic formats as may be in existence now or developed in the future. Author further grants to ProQuest/UMI the right to include the abstract, bibliography and other metadata in the ProQuest Dissertations & Theses database (PQDT) and in ProQuest/UMI's Dissertation Abstracts International and any successor or related index and/or finding products or services.



# Public Access to ETDs is NOT a **Red Flag** for Publishers

- **Do Open Access Electronic Theses and Dissertations Diminish Publishing Opportunities in the Sciences?**
- <http://crl.acrl.org/content/75/6/808.abstract?sid=cf41de7c-6fd1-4c72-a09d-b44a9cfd83e3>
- <http://scholar.lib.vt.edu/copyright/cprtetd.html>

Science editors reported that manuscripts which are revisions derived from openly accessible ETDs are...





## Science Editors: OA ETDs are OK

“Our journal has essentially ignored any potential conflict arising from publication of ETDs, because the situation is really not different from the days of hard copy thesis holdings by University libraries. They ... are simply more easily available now... thesis without peer review in an open access format will never be considered “double publishing.””





# Science Editors Advice for ETD Authors and their Faculty Advisors

“While we recognise theses as legitimate and citeable publications, they are considered gray literature because they do not go through blind external peer review and are not published in a recognized peer reviewed outlet. They are not considered prepublication...”

“Work which has not been published in archival peer reviewed journals is considered appropriate for submission, even if it is accessible elsewhere.”



## Scholar's Copyright Addendum Engine

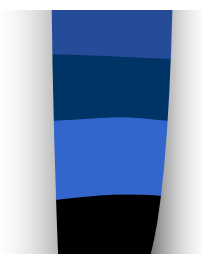


The Scholar's Copyright Addendum Engine will help you generate a PDF form that you can attach to a journal publisher's copyright agreement to ensure that you retain certain rights.

[\(get started\)](#)

### Description

Each addendum gives you non-exclusive rights to create derivative works from your Article and to reproduce, distribute, publicly perform, and publicly display your article in connection with your teaching, conference presentations, lectures, other scholarly works, and professional activities. However, they differ with respect to how soon you can make the final published version available and whether you can authorize others to re-use your work in various ways. Below is a summary of the available options.





# Balanced Approach to Copyright

## ■ Authors

- Retain the rights you want
- Use and develop your work without restriction
- Increase access for education and research
- Receive proper attribution when your work is used
- Deposit your work in an open online archive where it will be permanently and openly accessible: VTechWorks, etc.

## ■ Publishers

- Non-exclusive right to distribute a work with a financial return
- Receive proper attribution and citation as journal of first publication
- Migrate the work to future formats and include it in collections



# Copyright Resources at VT Libraries

- Copyright

- <http://scholar.lib.vt.edu/copyright/>

- <http://www.lib.vt.edu/copyright/>

- Fair Use

- <http://scholar.lib.vt.edu/copyright/cprtfairuse.html>

- Copyright and Authors (inc. ETDs)

- <http://scholar.lib.vt.edu/copyright/cprtetd.html>

- Request Permission: Sample letter

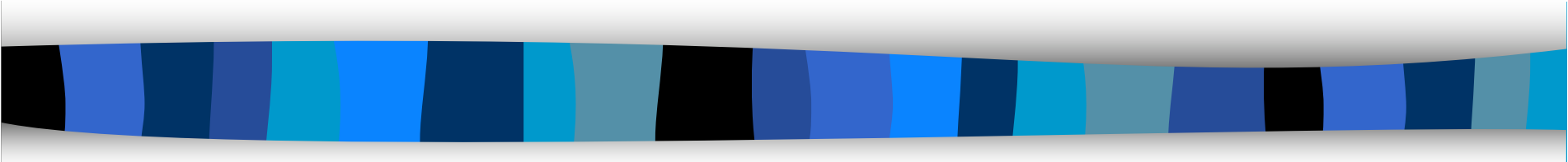
- <http://etd.vt.edu/howto/permission.html>

- US Copyright Office

- <http://www.copyright.gov/>

# Copyright in Research and Scholarship

<http://www.lib.vt.edu/copyright/>  
<http://scholar.lib.vt.edu/copyright/>



Gail McMillan                      gailmac@vt.edu  
(540) 231-9252  
2036 Newman Library