

# Open Licensing for Library-Created Content

A Report for the University Libraries at Virginia Tech

by the Open Licensing Task Force  
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## I. Purpose

The purpose of this report is to identify problems and propose solutions regarding the sharing and reuse of content created by the University Libraries at Virginia Tech. This report also identifies, where possible, open licensing policies and practices at academic libraries and other organizations. The authors are not attorneys, and this report should not be construed as legal advice.

The Open Licensing Task Force was charged by Library Council to:

- i. Identify individual and departmental needs, perspectives, and issues regarding the prospect of their work bearing an open license;
- ii. Investigate the process by which individual employees might openly license their works;
- iii. Investigate the process by which the University Libraries might openly license its work;
- iv. Draft a recommendation for the Dean's consideration (to be sent by the Library Council).

## II. Background

### **University and Library Mission**

Access, dissemination, discovery and efficient use of information are part of the mission of the University and University Libraries' strategic plan. This assessment of open licensing for library-created content is consistent with [the library's mission, vision, and aspirational qualities](#), and consistent with its ongoing efforts to promote [open access](#), [open data](#), and [open educational resources](#).

Likewise, open licensing is well aligned with [the university's mission](#), which includes the "discovery and dissemination of new knowledge." As a public land-grant institution, Virginia Tech acknowledges that it creates information with financial support from taxpayers at the state and federal levels. Efficient and effective dissemination of intellectual property (IP) is part of the University's mission. According to the [University's Intellectual Property Policy 13000](#), "The University's mission includes dissemination of IPs in the most efficient and effective manner possible. The identification and optimization of opportunities for the industrial/commercial utilization of some IPs is also part of this mission, as is the protection of the ownership rights of both the individuals and the University." (p.1) Although it is not applicable to employees of public institutions of higher education, it is worth noting that the Commonwealth of Virginia calls for policies to be established that authorize state agencies "to release all potentially copyrightable materials under the Creative Commons or Open Source Initiative licensing system, as appropriate" ([VA Code Ann. § 2.2-2822](#)). As part of a public land grant institution, the University Libraries are "dedicated to ... enabling open access to locally produced scholarship. We are committed to making the discovery and use of information efficient, quick and seamless to our users" ([University Libraries Strategic Plan 2012-18](#)). Part of our collections include library-created and university-owned resources which we want to share, and to which we already provide free access to the world.

Even though sharing and reuse of taxpayer-funded research and educational resources are becoming a best practice, end users currently face many barriers to effective reuse of content. According to U.S. copyright law, unless otherwise indicated, all content is fully copyrighted when created and fixed in a medium (except Federal documents). Individuals who are copyright owners maintain exclusive rights (for their lifetime plus 70 years, generally) to reproduce, prepare derivative works, distribute copies, publicly perform, publicly display, and transmit their works ([92 U.S. Code 1 S106](#)). Thus, simply granting "free online access" without rights to reuse,

modify and remix might not be sufficient to meet our users' needs. Reuse and redistribution of another's "free online" materials requires an often effortful "fair use" analysis, application of another lawful copyright exemption, or the effort of obtaining permission. Additional barriers to access, when not required by a donor agreement introduce inefficiency into the research process. And, barriers to materials in the public domain (or verbatim copies of digitized materials) limit access to those without the means to overcome such barriers.

Explicitly granting permission to reuse, modify, and remix copyrighted content helps address the need to obtain permission (i.e., the "permissions culture"). The University Libraries at Virginia Tech have an opportunity to address content sharing barriers by establishing a clearly stated and well reasoned open licensing practice for the works it creates and that are clearly owned by Virginia Tech.

### **Content Ownership**

The University Libraries staff and faculty create a wide variety of content types. Ownership, that is, copyright, of this content generally falls into two categories:

Traditional Works of Scholarship: According to [VT Intellectual Property Policy 13000](#) copyright remains with the author for traditional works of scholarship. These works benefit Virginia Tech "by their creation and by continued use by the University in teaching, further development, and enhancement of the University's academic stature." The University retains rights in Policy 13000 to use these items for teaching, research, and extension in perpetuity at no cost. Examples might include a peer-reviewed article, a conference presentation, or a book.

Works for Hire: Circular 9 from the US Copyright Office, describes "[Works Made for Hire](#)" as those prepared by employees within the scope of their employment *or* "works specially ordered or commissioned for use" ... "if the parties expressly agree in a written instrument." Works made for hire describe library resources that library faculty and staff create specifically to inform library users, for example, the website [Scholarly Communication](#).

This report addresses the latter category, works for hire, and excludes traditional works of scholarship for which the author retains copyright. This report also excludes software and "novel results of research" (products, processes, machines, software, biological technology, etc.) as addressed in [Policy 13000](#)). The Library Faculty Association's [Open Access policy](#) addresses one type of traditional scholarship, peer-reviewed articles, and grants the University non-exclusive rights. Individuals who retained copyright of these items could consider openly licensing them.

### III. Considerations for Content Types

The University Libraries produce a diversity of copyrighted content for a number of purposes. This content is owned by Virginia Tech and its licensing is under the purview of the Dean of the University Libraries. The next section of this report outlines findings specific to content types.

### **Website Content**

The task force identified several academic libraries that are using Creative Commons licenses, on their websites; Creative Commons licenses are open licenses which require attribution and allow no-cost reuse, remixing, and redistribution. Those libraries using the [Creative Commons Attribution](#), or CC BY, license include (with links to policies) the [University of Michigan](#), the [University of Iowa](#), the [Ohio State University](#), and the [University of California Santa Cruz](#). Libraries using the [Creative Commons Attribution-NonCommercial](#), or CC BY-NC, license include the [University of California Berkeley](#), [Stony Brook University](#) and [Georgia State University](#). The [University of Alberta](#) Libraries website uses the [Creative Commons Attribution-NonCommercial-ShareAlike](#) (CC BY-NC-SA) license. The Georgia State University library says that “we do not claim ownership of any material created by Georgia State University and such material is not included in the terms of this license.” This type of implementation leaves the user wondering how to determine which materials are excluded from being CC licensed. Indeed, because license statements on websites usually include the phrase “unless indicated otherwise,” it is important to identify and mark any content to which the website license does not apply.

Website content is a comprehensive category that contains all of the University Libraries’ online presence, including the content types addressed below, and all library-related domains and subdomains (such as [VTechWorks](#) and [Information Skills Modules](#)). Much of this content is created by library employees in the scope of their job duties. For example, website development is part of the job description of the Web Applications Developer, and the Web Architect and Manager prepares page layouts and communicates the library brand. Likewise, liaison librarians, for example, provide content for this web presence as part of their job duties, such as course guides, learning modules, and navigation guides for information resources.

### ***Learning Objects***

Library-created learning objects may include web-delivered tutorials and descriptive text, instructional screencasts, interactive tools, presentations, assessment tools for classroom instruction, and other learning resources. These are works generally developed by a library webmaster, College/Liaison librarian, or as part of the instructional program of one of many different library departments.

In fact, Virginia Tech Libraries incorporate others’ CC-licensed content such as the [Search Strategy Builder](#) tool from the University of Arizona. A design feature of this content allows customization, embedding, branding by the host institution, and attribution to the originating institution.

These works are often instructional components prepared by employees as part of their job descriptions. Most of these works are not considered “traditional works of scholarship”. Thus, it falls to the University Libraries rather than the individual employee to determine the copyright/licensing status of such resources.

Because certain learning objects created by the University Libraries, such as the [Information Timeline](#) and [Engineering Standards](#) have received among the highest number of permissions requests, they were licensed as [CC BY NC SA](#).

### **Topic and Subject Guides**

Topic and subject guides, such as LibGuides, are resource and instruction tools created for for specific purposes and containing text, links, and learning resources. While resource descriptions may be subject to Copyright and used according to Fair Use, descriptions are typically written by a webmaster, LibGuide administrator, or LibGuide editor/subject librarian, with layout and navigation arrangements designed by each LibGuide editor. Springshare's LibGuide system enables replication of entire LibGuides as templates beyond one's institution. Springshare's documentation suggests that one should obtain permission before copying and indicates that the party whose content was copied will be notified. The LibGuide system does not enable copying of individual boxes from outside of one's institution. According to LibGuide administrator, the University Libraries receive requests to reuse selected boxes (and sometimes only notifications that such reuse has happened). At least one LibGuide editor has already added an open license (CC BY) to [her LibGuides](#).

### **Special Collections and University Archives**

The [mission of Special Collections](#) at Virginia Tech is to “collect and preserve unique, historical materials and provide access to them in their original form.” Special Collections owns the majority of its unpublished analog and digital collections, as well as the copyright, with some exceptions due to donor agreements and privacy issues. Restrictions on use or access, permission issues, or copyright concerns are generally noted in finding aids, catalog records, or other descriptions.

Online Special Collections materials [[Special Collections online](#), [digitized manuscripts](#), and [electronic exhibits](#)] are available for personal, research, and educational purposes with proper attribution. Use of all materials for publication, public exhibition, or web distribution requires permission from Special Collections. Individuals unsure about copyright, access, or use of materials should contact Special Collections staff for assistance. Required permissions are designed to preserve the uniqueness of the collection, prevent unauthorized commercial use, establish provenance, and allow the department to track usage. Special Collections' existing [Conditions of Use](#) statement indicates current policies for Special Collections materials.

The [University Archives](#) is part of Special Collections, and for the most part, materials are governed by the same conditions of use. Public access to some materials is restricted by state law.

Metadata (covered in-depth in a subsequent section of this report) is represented here by archival finding aids; licensing of archival metadata is an emerging topic at this time. Because of Special Collections involvement with [Virginia Heritage](#), Special Collections is committed to labeling finding aids and other descriptive records as [CC0](#) (“No Rights Reserved”).

### **Metadata**

Much of the metadata used by the University Libraries for the discovery and management of information resources is not created internally. Instead, it is imported from or included in other services which may or may not assert rights over part or all of it. Since library metadata is a collection of facts about an information resource, it is generally not considered copyrightable, although there is some uncertainty in this area. Some information providers consider their metadata to be proprietary, especially labor-intensive types such as abstracts and specialized vocabularies, and do not allow it to be shared widely. In 2008, OCLC attempted to assert some

rights over member-contributed metadata, resulting in considerable community discussion. OCLC's subsequent [policy revision](#) claims copyright for WorldCat as a compilation (i.e., database rights), but does not claim copyright for individual records. OCLC recommends the [Open Data Commons Attribution](#) (ODC-BY) license for the catalogs of its members (such as Virginia Tech) which may include OCLC-derived metadata.

Several academic and national libraries have placed their metadata in the public domain through the Creative Commons [CC0 1.0 Universal Public Domain Dedication](#). These organizations include (with links to policies) the [Harvard Library](#), the [University of Michigan Libraries](#), the [University of Florida Libraries](#), the [University of Iowa Libraries](#), the [University of North Texas Libraries](#), the [Digital Public Library of America \(DPLA\)](#), and the [British Library](#). The Harvard Library requests that users follow non-binding community norms, including attribution, contributing corrections or additions to the public domain, and observing [OCLC's community norms](#). Since 2011, the University of Florida Libraries have inserted a field into the MARC records it creates, which states that the metadata is in the public domain. It uses another MARC field to generate a display of this information in its online catalog. CC0 is one of the two licenses recommended in the [Principles on Open Bibliographic Data](#). Metadata created by the Library of Congress, because it is part of the U.S. government, is in the public domain.

While metadata sharing is crucial to the information ecosystem and is, therefore, the default in practice, in some cases there are limits on or uncertainty about sharing. By placing it into the public domain, metadata creators remove uncertainty regarding reuse rights and ensure the widest possible distribution of their metadata.

Public domain metadata may become a necessity for the Libraries' participation in network-level aggregations. For example, partnership with the DPLA would require the library to place its metadata into the public domain using CC0. [The Open Library](#), a project of the Internet Archive, [requires CC0 metadata](#) from libraries and other providers for use in its catalog. Additionally, [open licensing proposals at federal agencies](#) may affect grant-funded metadata in the future, such as [NEH-funded finding aids](#).

The library currently creates metadata for a variety of purposes, such as preservation and discovery, and which may be contributed to larger aggregations. Most of the library's metadata is not explicitly licensed. While finding aids have been copyrighted in the past, the library is planning to designate them as [CC0](#) in order to contribute them to [Virginia Heritage](#), a DPLA hub.

It is important to know where library-created metadata is aggregated because the licensing conditions of aggregators may affect how our metadata is shared, and vice versa.

Library-created metadata formats and the discovery portals to which they are contributed include:

- MARC ([Machine Readable Cataloging](#))
  - o for Addison, Summon, WorldCat (OCLC)
- Dublin Core
  - o for [VTechWorks](#), [Special Collections Online](#), [DH Omeka](#), Summon,
- EAD ([Encoded Archival Description](#))
  - o for finding aids

- for local hosting (in progress), Summon, [Virginia Heritage](#), [ArchiveGrid](#) (OCLC), DPLA (future)
- EAC-CPF ([Encoded Archival Context - Corporate Bodies, Persons, and Families](#))
- MODS ([Metadata Object Description Schema](#))
- METS ([Metadata Encoding & Transmission Standard](#))
  - generates Dublin Core for [Special Collections Online](#)
- VRA Core ([Visual Resources Association Core](#))
  - Shared Shelf, Summon

#### IV. Benefits and Risks of Open Licensing for Library-Created Resources

Numerous cultural heritage institutions, including academic libraries, have begun openly licensing metadata, images, websites, and other content, in accordance with [community-established principles](#). These institutions recognize that their primary mission is the widest possible dissemination of their information content.

What are the implications for openly licensing library-created content? Copyright creates a time-limited monopoly on the control of creative works, primarily for economic reasons. With rare exceptions, the library neither receives nor expects economic return for the information it creates. Therefore, the impact of open licensing library-created content should, in economic terms, be minimal or nonexistent. For example, even though the library receives credits for the metadata it contributes to OCLC, those credits would not be affected by openly licensing the metadata.

Despite the lack of an economic incentive to create content, copyright gives the Libraries control over how its content is used by others. This creates a permissions-based environment which is inefficient for information sharing. Indeed, the Libraries often receives questions from faculty and students about the use of copyrighted materials for classroom use and in papers and publications. Open licensing, along with [clear rights statements](#), will contribute to faculty, staff, and student knowledge of the intellectual property conditions under which information is created and disseminated. Indeed, knowledge of these conditions should be an important part of the library's information literacy efforts.

In terms of Libraries-created content, our interests are not well aligned with a default copyright environment, because value is created not economically, but by usage. To facilitate usage, there should be few if any restrictions on the dissemination or reuse of library content. The recent change in practice from copyrighting finding aids to designating them CC0 to enable inclusion in DPLA will likely increase discovery. The Libraries could also consider contributing CC-licensed images, video, and sound to [Wikimedia Commons](#) to enhance usage. Libraries' content could be discovered through [CC Search](#) and other search services that allow license filtering. As mentioned earlier, the Libraries already benefit from others' CC-licensed content such as the [Search Strategy Builder](#) tool from the University of Arizona.

One potential criticism of adopting open licensing is that the Libraries may receive few or no requests for reuse of its content, which in turn would mean that the library would have less usage data on Libraries-created content of interest to others. The Libraries could assess usage of its openly licensed content by examining website analytics or server logs. This method might

be preferable to the current situation, in which permission requests for some departments are not recorded in a comprehensive way. In the learning objects example previously mentioned, open licensing was used specifically to reduce requests. By modeling and promoting [best practices in attribution](#), particularly linking back to source material, the Libraries might encourage behaviors that result in effective data collection. Creative Commons has noted the [manual nature of attribution](#), and may be developing license infrastructure that provides better usage data to licensors. The Libraries could also go beyond tracking individual attributions to gathering usage data from shared material via [open source software](#), for example as [used by ProPublica](#).

The [Creative Commons Attribution license](#) (CC BY) provides some protection for licensors by requiring users to indicate whether any changes were made to the resource, and by requiring that attribution not be made in any way that suggests the licensor endorses the user or use. In addition, a licensor may request removal of the attribution, and licensees are required to comply. Any violation of the terms results in automatic termination of the license. The Libraries could address violations or concerns by sending notice, perhaps by adapting Wikipedia's [standard license violation letters](#), for example. While license violations may not be easily discoverable, automated means of [detecting license violations, including attribution](#), are being developed. The Libraries could also work with University Counsel to develop terms of use for its website and other content (see terms of use from [Creative Commons](#), [PLOS](#), [Mozilla](#), and [MERLOT](#)). Creative Commons offers a terms of service checklist for [user-generated content](#), should that become a part of any Libraries website. Terms of use could not be found on Virginia Tech's current website.

Some Creative Commons licenses, such as the CC BY-NC-SA ([Attribution-NonCommercial-ShareAlike](#)) license are currently in use for some library content, but the additional restrictions do not address significant concerns. The Libraries has no discernible interest in preventing commercial use, and imposing downstream licensing conditions (such as ShareAlike) may be more likely to hinder usage than promote it. Content created by the Libraries should, to the fullest extent possible, be covered by a single license to avoid confusion. It is also worth noting that Creative Commons licenses are irrevocable. While a licensor can cease distribution under a CC license, anyone with access to the previously licensed material may continue to use it under the license terms.

To some degree, encouraging usage through open licensing means less control over Libraries-created content. There is always the risk that content will be reused in a way that we find objectionable, even when the user observes the license terms. However, as outlined above, there are steps the Libraries could take in the event of a license violation or an objectionable use. Open licensing requires a change in mindset from the default "all rights reserved" copyright culture. Some Libraries content has been openly licensed for years without incident, such as the [Digital Library and Archives website](#). The benefits of greater sharing are likely to far outweigh the chance that the Libraries would not approve of a particular reuse.

## V. Recommendations

1. ***Library-Created content and resources*** for Virginia Tech and the public, including but not limited to website content, learning objects, subject guides/LibGuides, reports, and other works for hire which are clearly owned by the University Libraries and are not scholarly works owned by the author, should be marked with a [Creative Commons Attribution 4.0](#)

[International License](#). This license allows the most free use and customization of the material. Any content to which the website license does not apply should be indicated. For example, items containing portions of copyrighted materials used under fair use (e.g., thumbnails, quotes etc.) should include mention of the status of these particular items. A standard statement listing Virginia Tech as the copyright holder should also be clearly listed on each item, such as “© Virginia Tech, Licensed under a [Creative Commons Attribution 4.0 license](#), unless indicated otherwise.” A standard attribution for use by third-parties should also be listed as a requirement for reuse. For example: (c) Virginia Tech, Name of Work and URL to work, [CC BY 4.0](#). Creative Commons offers a guide to [best practices for marking](#) various types of content.

The Libraries should:

- Encourage library employees to explore platforms for collaborative development, sharing, and retrieval of CC licensed resources;
- Contribute CC-licensed images, video, and sound to [Wikimedia Commons](#) to enhance usage;
- Model and promote [best practices in attribution](#); and
- Create a web page on the Libraries site explaining copyright and licensing for library-created material.

## **2. Special Collections and University Archives**

Special Collections should consider [CC0 licensing](#) of archival finding aids and descriptive metadata.

To the degree permitted by law, donor agreements, privacy, and security concerns, Special Collections should consider ways to engage audiences in novel ways on the web in order to further extend the reach of materials digitized by Special Collections. Suggested ways to do this may include:

- Mark digitized, online works with [standardized rights statements](#). For example: [LOC Prints & Photographs](#) or [The Smithsonian's Flickr stream](#);
- Indicate that “Rights assessment is the responsibility of the user”;
- Mention “Fair Use” as a permitted approach to using Special Collections materials. For example, see [“Permitted uses;”](#)
- Consider piloting an approach of open licensing (see [OpenGlam](#)) for one or more, or portions of groups of works listed below: [Institutions using this approach](#);
  - Digital scans already accessible online via Special Collections;
  - Digital scans of public domain works for which donor agreements, nor privacy, nor security concerns prohibit broader distribution; or
  - Digital scans selected for wider access by Special Collections.
- Depending on outcomes from the suggested pilot, Special Collections could consider one of the following licensing schemes for digitized materials (where law, donor agreements, privacy, security concerns permit):
  - [CC0](#) with a required attribution when law, donor agreements etc. allow unrestricted public access for any purpose, or
  - [CC BY-NC licensing](#) (requires attribution) where only non-commercial uses are allowed.

**3. Metadata:** Libraries-created metadata that is made available to the public for the purpose of information resource description and discovery (for example, in [Addison](#) or [VTechWorks](#)) should be placed into the public domain through the [CC0 1.0 Universal Public Domain Dedication](#). The Libraries should not claim database rights or require permission for the use of metadata databases. The Libraries should provide information about accessing the metadata ([Harvard example](#)). The Libraries should also make a non-binding request that:

- The University Libraries at Virginia Tech, OCLC, and the Library of Congress be given attribution as a source of the metadata, to the extent possible;
- In regard to OCLC-obtained or derived metadata, respect and act in accordance with the [community norms](#) set forth in the *WorldCat Rights and Responsibilities for the OCLC Cooperative*; and that
- No additional conditions be applied when making this metadata available, and that any improvements to the metadata also be contributed to the public domain.

## VI. Acknowledgments

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## Appendix A: Current open licensing practices at University Libraries:

Several web resources within the Virginia Tech Libraries domain have Creative Commons licenses, including

- [Student-centered assessment tools](#)
  - Instruction Clearinghouse pages' text and linked PDFs by [Virginia Tech Libraries](#) is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](#).
- [Scholarly Communication/Digital Library and Archives](#) has had a "default" CC-BY-NC-SA license on its web pages since at least 2010
- Subject guides/LibGuides
  - [Open Educational Resources](#) CC BY, unless indicated otherwise
  - [Open Access](#) CC BY, unless indicated otherwise

Some library-related works are not technically within the Libraries web domain, for example the blogs [Open@VT](#) (CC BY) and [In Special Collections](#) (presumed ©). Unless these are works for hire, copyright ownership is with their respective authors, as are personal but work-related web sites, social media content, etc.

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