

## OER at Reynolds: Terms and Definitions<sup>1</sup>

*Open Education "...is the simple and powerful idea that the world's knowledge is a public good and that technology in general and the Worldwide Web in particular provide an extraordinary opportunity for everyone to share, use, and reuse knowledge."* —The William and Flora Hewlett Foundation

An OER course must fit a number of criteria. In better understanding OER, it is important to remember that there is a distinction between an individual open education resource (a text in the public domain, for example) and an OER *course*. An OER course aims to include as many open materials as possible, but it is often not possible for a course to be entirely open. Courses that require cultural artifacts (literature, music, art, film) from the year 1923 to the present are often impossible to create as *entirely* open courses because the artifacts that are essential to the course are still under copyright. Two forms of copyrighted materials have been approved for use in OER courses. The first -- *linking out* to copyrighted materials -- is an accepted practice by OER practitioners. In addition, because the colleges that make up the VCCS have paid for library materials and they are therefore available to students at no additional cost, an OER course may include links to library materials even though they are copyrighted.

While all materials used to teach an OER course are free, not all free materials can be used in an OER course. Those characteristics that are essential to OER include free and accessible course materials, the importance of sharing, and adherence to U.S. copyright law. As such, an OER course at Reynolds is one that:

1. Does not require the student to purchase a textbook<sup>2</sup>
2. Provides digitized course materials available through Blackboard<sup>3</sup>
3. Includes course materials in one or more of the following areas:
  - a. open textbooks
  - b. original materials created by the instructor with a creative commons license
  - c. materials in the public domain
  - d. materials published under a creative commons license, including OER courses on Blackboard
  - e. materials available through the college library (e-books, videos, database articles)
  - f. links to copyrighted materials online

A course may NOT be designated as an OER course if it:

1. requires the purchase of a textbook no matter how inexpensive
2. does not require the purchase of a textbook, but instead makes use of photocopied or scanned copyrighted materials that violate "Fair Use" guidelines

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<sup>1</sup> *This document has been developed by Jane Rosecrans for use in the Reynolds OER Initiative, which is part of the Zx23 VCCS grant, and is licensed under a Creative Commons 4.0 License.*

<sup>2</sup> The VCCS has created a separate attribute – LT40 – in SIS for courses that require the purchase of textbooks or lab manuals under \$40.

<sup>3</sup> In order to be considered accessible, OER materials must be posted on Blackboard.

3. does not require the purchase of a textbook, but instead relies on original content developed by the instructor who has not licensed the material under a creative commons license
4. does not require the purchase of a textbook, but links to sites that violate copyright law
5. does not require the purchase of a textbook, but uses proprietary materials provided by publishers or manufacturers at no cost

## Open Textbooks

Open textbooks are complete textbooks published under a creative commons license. These textbooks are available through organizations that specifically focus on the creation of open textbooks. The University of Minnesota operates the [Open Textbook Library](#) as part of the Open Textbook Network of twelve universities. Rice University operates [Open Stax College](#) which includes open textbooks in the social and natural sciences and economics. [Lumen Learning](#) and the [Community College Consortium for Open Educational Resources](#) also offer a catalog of open textbooks. Perhaps the easiest way to locate open textbooks is simply to google your course or discipline.

## Original Content

Many faculty members create their own materials to use in their courses. This material is considered open only if the instructor licenses the material under an open license such as a creative commons license. Faculty members can easily publish content they have developed for their courses. Identify which license you wish to apply to your work and mark your work with a statement such as, “This work is licensed under the Creative Commons 4.0 License.”<sup>4</sup> Creative Commons has developed a guide for licensing original content -- [Marking your work with a CC license](#) – and provides [downloads](#) for creative commons logos, buttons and icons. Because OER relies on openness and sharing, any course in which the faculty member prefers not to publish original work with a creative commons license will not be designated as an OER course even if students are not required to purchase a textbook.

## Materials in the Public Domain

Materials in the public domain may be used in one of two ways – linked out from the course or as documents created by the instructor as long as the document attributes the original author. It is also recommended that you attribute the site where it was accessed and the URL. For example, you may want your students to read Charlotte Perkins Gilman’s *The Yellow Wallpaper*. You may link to the e-book through Project Gutenberg in your syllabus or elsewhere in your course. You may also create a Word document of the text and post it to Blackboard. In the latter case, provide a footnote after the title with an attribution: “Charlotte Perkins Gilman’s *The Yellow Wallpaper* has been published by Project Gutenberg and is available at <http://www.gutenberg.org/files/1952/1952-h/1952-h.htm>.”

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<sup>4</sup> The Creative Commons 4.0 license is the most recent version of the suite of licenses created by the nonprofit Creative Commons. For more information on the 4.0 licenses, go to <https://creativecommons.org/licenses/by/4.0/>.

## Materials Published under a Creative Commons License

How do you know if a document has been published under a creative commons copyright? You will need to simply inspect the document you have located. Usually, this information is located at the bottom of the web page. Here is the creative commons license for Lumen Learning: “© 2014 Lumen Learning, LLC. Lumen Learning, Candela and the Lumen logo are trademarks of Lumen Learning, LLC. Unless otherwise noted, content on this site is licensed under the Creative Commons Attribution 4.0 License.” All Wikipedia articles are published under a creative commons license (“Text is available under the Creative Commons Attribution-ShareAlike License”). For more information on the types of creative commons licenses, visit the [Creative Commons Libguide](#) developed by our library.

## Materials Available through the College Library

The library provides access to thousands of magazine, journal and newspaper articles, eBooks, and streaming videos available through databases purchased by the college. These databases are licensed for use by Reynolds students, faculty and staff and can be accessed from both on and off-campus. Most databases can be accessed from off-campus by logging in with your My Reynolds login. The databases cover a wide range of subjects and disciplines that support the college’s curriculum.

- Databases by Subject or Title: <http://libguides.reynolds.edu/az.php>
- eBook databases: <http://libguides.reynolds.edu/az.php?s=43299>
- Video databases: <http://libguides.reynolds.edu/az.php?s=43294>

Reynolds librarians develop and update customized online research guides tailored to specific subjects or research assignments. These guides are excellent starting points for research and include links to relevant and credible resources as well as search tips for retrieving these resources. Reynolds librarians are available to collaborate with teaching faculty to develop new guides for a specific subject or assignment. Below are some helpful links to Reynolds LibGuides.

- Reynolds Research Guides (Master List): <http://libguides.reynolds.edu/>
- Ebooks @ Reynolds Library LibGuide: <http://libguides.reynolds.edu/usingebooks>
- Streaming and DVD Collections @ Reynolds Library LibGuide: <http://libguides.reynolds.edu/videos>
- Beyond the Textbook: Integrating Library Resources into Blackboard LibGuide: <http://libguides.reynolds.edu/blackboard>
- Open Educational Resources LibGuide: <http://libguides.reynolds.edu/oer>
- Copyright Issues LibGuide: <http://libguides.reynolds.edu/copyright>

## Links to Copyrighted Materials Online

Faculty who wish to use copyrighted material outside of the college library may do so by linking to it online. *Faculty may not embed copyrighted material into their own documents, which they then post to Blackboard.* Although copyright holders cannot know of these violations because a

pin is required to access Blackboard, it is still a violation of copyright law and will not be permitted. Hyperlinks are easy to insert into syllabi and other course materials. Faculty must make every effort to ensure that the links they use for their courses do not violate copyright law (see pirated online course materials below).

#### Fair Use Violations<sup>5</sup>

No course that violates Fair Use guidelines will be designated as an OER course, despite the fact that the course does not require students to purchase a textbook. Fair Use guidelines are based on the Copyright Act of October 19, 1976 (title 17 of the *United States Code*, Public Law 94-553, 90 Stat. 2541). According to the Act, the owner of the copyright maintains exclusive rights to reproduce, create derivatives of, distribute, publish, perform publicly, or display the copyrighted work. Section 107 of the Act provides for “Limitations on exclusive rights: Fair use.” The first sentence of this section reads: “Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

A work does not have to have been published in order for it to be protected by copyright. *Please bear in mind that there remains “no real definition of the concept” of Fair Use either by the copyright office or the courts because the variations and combinations of circumstances surrounding Fair Use is constantly changing.* However, the courts have established a set of criteria in order to determine the difference between fair use and copyright infringement. The criteria are:

1. The purpose of the use, specifically if it is for commercial or nonprofit educational use;
2. The nature of the work itself;
3. The amount of the portion used in relation to the work as a whole;
4. The effect of the use on the potential market for or value of the copyrighted work.

Representatives of writers and publishers and the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law came to an agreement prior to passage of the 1976 Copyright Act titled “Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with respect to books and periodicals.” Under the guidelines, teachers are permitted to make a single copy of book chapters; newspaper and journal articles; short literary works; and graphs, charts, cartoons, and diagrams. Multiple copies are permitted for use in the classroom, provided that the copying meets the “brevity and spontaneity” test, the “cumulative effect” test, and includes notice of copyright. As a result, in order for a faculty member to use copyrighted material under the Fair Use guidelines, the reproduced work must adhere to the following:

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<sup>5</sup> Information in this section is based on the circular “Reproduction of Copyrighted Works by Educators and Librarians,” issued by the United States Copyright Office located at <http://www.copyright.gov/circs/circ21.pdf> and revised in August 2014.

1. Brevity: a poem or poem excerpt of less than 250 words; an article, essay or story of less than 2500 words or a prose excerpt of not more than 1000 words or 10% of the larger work, whichever is less; one chart, graph, diagram, drawing, cartoon or picture per book;
2. Spontaneity: the copying is at the “instance and inspiration” of the individual teacher and the decision to use the work and the “moment of its use for maximum teaching effectiveness are so close in time” as to make a permission request unreasonable;
3. Cumulative Effect: the copying or the material is for one course; not more than one short work or two excerpts from a given author nor more than three works from a collective text may be copied; each course may not include more than nine instances of copying copyrighted material for the course.

Also part of the agreement are the following prohibitions:

1. Copying may not be used to create or replace anthologies, compilations or collective works.
2. “Consumable” texts such as workbooks, exercises, and answer sheets may not be reproduced.
3. Copying shall not substitute for the purchase of books, be directed by someone other than the individual teacher, nor is it permitted for the copyrighted item to be reproduced by the same teacher for the same course semester after semester.
4. No cost shall be incurred by the student other than the actual cost of photocopying.

If a faculty member’s course is made up of a compilation of reproduced or scanned copyrighted materials or any combination of copyrighted work with other materials that course will not be designated as an OER course. For more information, visit the Reynolds Library’s [Fair Use resources](#), including guidelines and checklists.

### Pirated Online Course Materials

Sometimes faculty members will come across online material they believe to be under copyright. One English instructor came across short stories by J.D. Salinger that he knew to be pirated. *How do you know if something you find online is still under copyright?* Copyrighted material will state its copyright status somewhere on the website on which it appears. The Poetry Foundation, for example, has received permission to post the work of many contemporary poets. If you locate material without copyright information and if the work is recent enough and the author is living or has died within the past 70 years, it is most likely a pirated posting. Tracing the source of the online content (often a PDF) to the source webpage, can further help you determine if copyright is being violated. There are many online instances in which college faculty have scanned a copyrighted text and then posted it to their online faculty page; *this is a violation of copyright*. Faculty should *assume* a work has been pirated if it was published in 1923 or after and the document contains no copyright information. Courses that include links to pirated course materials will not be designated as OER courses.

### Free Proprietary Materials

For some courses, publishers and/or manufacturers may make their own proprietary materials available to students for use in the classroom at no cost. Faculty sometimes pilot textbook publishers are pitching or manufacturers make their own materials available to students because machinery or other required products have been purchased by a program for use with specific courses. Courses that make use of these free materials will not be designated as OER courses.