

# **Policy for Copyright Compliance**

Western New England College

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## INTRODUCTION

Reproduction of copyrighted material, without first obtaining permission of the copyright owner, is an issue of concern in an academic setting. Western New England College's faculty, staff, employees, and students are expected to respect the rights conferred by the copyright laws of the United States and foreign countries, as well as rights conferred through licensing arrangements. The unauthorized use of protected materials without first obtaining permission from the copyright owner is strictly prohibited at the College.

Federal law protects "original works of authorship fixed in any tangible medium of expression..." from any unlawful reproduction, distribution, performance, and/or displays or performances. (17 U.S.C. 101 *et al*) Should a person wish to lawfully reproduce, distribute, or perform a protected work, he/she must first obtain permission from the valid copyright holder.

In an educational setting, many forms of copying are permitted under the "fair-use" exception to the copyright code. However, it is always advisable to obtain permission from the holder of the copyright before making any copies.

The College's copyright policy is designed to give faculty, staff, and students a better understanding of the need to obtain permission to use copyrighted material, and the exceptions as to when permission is not needed.

Western New England College has established the following guidelines to assist the College community's compliance with copyright laws. Any specific questions, concerns, or requests for clarification, not specifically addressed in the following pages, should be directed to the Office of the General Counsel at the College.

## **DEFINITIONS**

### **Copies**

Copies are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.<sup>1</sup>

### **Copyright Owner**

With respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.<sup>2</sup>

### **Public Domain**

A public domain work is a creative work that is not or never was protected by copyright. This includes works where the term of copyright has expired (See Appendix 1), works where the author failed to satisfy statutory requirements, or if an employee or officer of the United States Government produces the work, acting within the scope of his or her official duties. There is no similar exception with respect to works created by state or local government officials or employees.

### **Fair Use**

Fair Use is using a protected work, without needing permission from the copyright owner, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Any person wishing to use an original work for these circumstances is permitted to copy or use the original work without first obtaining permission from the copyright holder.

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<sup>1</sup> 17 U.S.C. Sec. 101

<sup>2</sup> 17 U.S.C. Sec. 101

## **COPYRIGHT IN GENERAL**

### **What is protected?**

Copyright laws protect all original works of authorship, fixed in any tangible medium of expression, that are not in the “public domain”. Copyright laws give to the copyright owner the exclusive right:

- (1) To reproduce the copyrighted work,
- (2) To prepare derivative works based on the copyrighted works,
- (3) To distribute copies of the copyrighted work to the public,
- (4) To perform the work publicly,
- (5) To display the work publicly, and
- (6) In the case of sound recordings, to perform the work by way of digital audio transmission.<sup>3</sup>

By giving the copyright owner of a work these exclusive rights, it is illegal for any individual, who does not have the copyright owner’s permission, to engage in any of these activities.

All original works of authorship get copyright protection, even a work that is unpublished. Prior to 1989, notice of copyright was required on all published works, and therefore works, published under the authority of the copyright owner without copyright notice prior to March 1, 1989, are likely to be in the public domain, but their status should be checked. Works published after March 1, 1989 are no longer required to have a notice of copyright and not having a notice will not necessarily take away the rights given to the author of the work.

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<sup>3</sup> 17 U.S.C. Sec. 106

## **INTERNET MATERIAL**

Putting material on-line, via Manhattan or the Internet, is copying as well as possibly distributing and/or displaying a work, and a potential infringement on the copyright owner's rights. Works found on-line, as well as works that are intended to go on-line must be treated the same as the work itself, and permission must be obtained before using such a work in any way that would infringe on the copyright owner's rights.

## GETTING PERMISSION

Western New England College belongs to a number of associations that allow the College to use copyrighted material without directly seeking permission from the copyright holder. These associations charge the College a per use fee. Through these associations, College staff, faculty, and students can easily obtain permission to use almost any work in a classroom, or for a recreational purpose on campus.

Unless otherwise stated below, the College advises that faculty, staff, and/or students wishing to use a copyrighted work, request permission in writing from the copyright owner. Most copyright holders will not withhold permission; however many will charge a fee to use the work. It is also advised that written permission be obtained from the copyright owner. Obtaining permission in writing from the copyright owner is important to determine the extent to which copyright owner is giving permission to use the work.

In order to simplify obtaining permission with respect to specific types of copyrighted works, the College recommends the following options available to the campus community.

### **BOOKS AND PRINTED MATERIALS:**

The Copyright Clearance Center<sup>4</sup> (CCC) is an organization which helps simplify the process of requesting permission to copy printed materials. The CCC provides copyright licensing and compliance, facilitating the exchange of use rights and royalties through a wide range of licensing services<sup>5</sup>. When using the CCC, be prepared to

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<sup>4</sup> [www.copyright.com](http://www.copyright.com)

<sup>5</sup> To learn more or to access CCC, visit <http://www.copyright.com>.

provide the title of the article or book, the publisher, the author's name, the number of pages to be copied, and the number of copies needed.

**“CLASS/COURSE-PACKS”** - Many publishers allow professors to “create” a book to be sold in the bookstore that contains material from a number of different sources, allowing a student to purchase only one book, rather than multiple books. This is usually available for combinations of materials that are produced by the same publisher. If a professor wishes to use many different sources published by different (or several) companies, or out of print sources to create a class pack, the College bookstore is available to advise on how to create this type of course-pack. It is suggested that a minimum of eight weeks be given in order to procure the necessary permissions to use the copyrighted material.

Copying chapters or portions of books and combining them into a “class-pack” to be copied by the campus print shop or posting them on-line in order to avoid making a “class-pack”, is not likely to be considered a fair use of the copyrighted material.

#### **MOTION PICTURES AND OTHER AUDIO VISUAL WORKS:**

The Office of Student Activities is able through Swank Motion Pictures Inc. to obtain permission to use a variety of movies and films on campus, for entertainment purposes. Swank charges a fee to the College and/or department requesting the film.

Lawful copies of many educational films and other audiovisual materials are permitted in the classroom setting under the “fair use” exception to copyright laws when being used in a “face to face” teaching environment. The library has many videos/DVDs available to professors for classroom use, and is available to help professors obtain lawful copies of videos they do not currently have available for classroom use.

## **MUSICAL WORKS AND SOUND RECORDINGS:**

Music and other audible works are copyrighted both as to audible portions and written lyrics. The College belongs to associations that grant permission to use and perform a variety of musical works, but not to distribute and/or copy the works.

Therefore, any musical work can be used and/or performed so long as it is not being copied in the process. To ensure that the musical work is covered under the College's agreements with a specific association, contact Student Activities well in advance of your anticipated date of use.

In order to comply with the copyright laws regarding written lyrics, refer to the books and printed materials section of this policy.

## **FAIR USE EXCEPTION TO COPYRIGHT PROTECTION**

While it is always best to obtain permission before using a copyrighted work, there are exceptions where permission is not needed. By far, the most commonly applied exception to the copyright protections in an educational setting is the “fair use” exception.

### **How do you know if you can claim fair use?**

Each claim for “fair use” involves a consideration as to the facts and circumstances surrounding the particular use of the copyrighted work and the type of work itself. In cases dealing with copyright infringement where the user asserted a claim for “fair use”, the court will look at several factors, including (1) the purpose and character of the use, including whether such use is of a commercial nature, or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for, or value of, the copyrighted work. These factors are carefully weighed and no one factor is controlling in every case.

**(1) Purpose:** If the purpose of using the protected work is for teaching, research, scholarship, criticism, comment, or news reporting, the law is likely to favor a finding of fair use. However, if factors indicate that the use is for commercial activity, profiting from the use, entertainment, bad-faith behavior, or to denying credit to the original author, the law is not going to find in favor of fair use. No one of these factors is conclusive and must be looked at in relation to all other factors.

**(2) Nature:** If the work in question is published, factual or nonfiction, and important to favored educational objectives, these factors weigh on a finding of fair use.

However, if the protected work is unpublished, highly creative, or fiction, a finding of fair use is unlikely.

**(3) Amount:** Generally, the smaller the amount used in relation to the whole, the more likely a court will find a fair use. However, a court will also look to other factors such as whether or not the portion copied is central or significant to the entire work, and appropriate for a favored educational purpose. Conversely, if the amount is a large portion or the whole work, or is central to the work (heart of the work), then a finding of fair use is unlikely.

**(4) Effect:** If the user owns, purchases, or acquires the original work by some other lawful means, makes only one or very few copies, which has no effect on the market or potential market for the copyrighted work, then a finding of fair use is likely. If however, the use could replace sale of the copyrighted work, impair the market or potential market for copyrighted work or derivative works, if affordable permission is available, if numerous copies were made, or the work was made accessible on the Internet or in another public forum, then a finding of fair use is unlikely.

While none of the above-listed factors are conclusive in the determination of fair use, all of them can and should be considered when determining whether or not you need to get the copyright owner's permission to copy the work you are using. If any doubt remains as to whether or not a use will qualify as a fair use exception, seek permission from the copyright owner.

## **TIPS FOR COMPLYING WITH THE “FAIR USE” EXCEPTION IN A COLLEGE SETTING**

### 1. Limit course materials and research copies to:

- Single chapters from a book;
- Single articles from a journal issue;
- Several charts, graphs or illustrations from a single collection;
- Never charge for copies or a “class pack” unless done so through the proper authorities at the Campus Book Store.

### 2. Include with your materials:

- Any copyright notice on the original;
- Appropriate citations and attributions to the source.

### 3. Limit library reserve materials to:

- Copies (one or two per legally obtained copy) of materials that a faculty member or the library already possesses legally (i.e., by purchasing the original, or obtaining an original copy through lawful means such as donation or private sale.)
- Limit photocopying of materials on reserve to a minimum. While photocopying an entire article would likely be an acceptable use, copying an entire book, which is on reserve, is not likely to be considered fair use.

## FREQUENTLY ASKED QUESTIONS

1. Am I infringing someone's copyright if I make multiple copies and either distribute those copies for free or require their return after use?

**Answer:** You may be infringing. You do not have to sell the copies or permanently dispose of them in order to infringe the copyright owner's rights.

2. Can I make a copy of an entire work or a substantial part of a work for my personal use without getting permission from the copyright holder?

**Answer:** There is no automatic exemption for making even one unauthorized personal copy of a copyrighted work. Nevertheless, the "Fair Use" guidelines provide that a teacher may make a single copy, for scholarly research or for use in teaching or preparing to teach a class, of the following works:

- a. A chapter from a book;
- b. An article from a periodical or newspaper;
- c. A short story, short essay or short poem,
- d. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

3. Can I legally copy a work I bought without infringing the copyright?

**Answer:** The purchaser of a work owns only that particular copy of the work. The purchaser does not own any rights in the copyright covering the contents of the purchased copy. Consequently, a purchaser cannot copy the purchased work, in whole or in part, without the copyright owner's permission unless such copying constitutes "fair use."

4. What should I do if I want to use materials that contain a photograph or illustration with a copyright owner different than that of the book itself?

**Answer:** You should note that many times photographs or illustrations are covered by copyrights owned by a different party than the copyright owner of the material in which they are published. The author or publisher of that material has received permission from the photographer or illustrator to include it in the work and may or may not have the right to grant permission to others to reproduce the photograph or illustration. Consequently, you may need to make a separate request for permission to copy the photograph or illustration. The photograph or illustration owner's name can usually be obtained from the credit line beneath the material or on the page containing the acknowledgements or notice of copyright. If the information is not available, the book publisher can usually supply this information and can also tell you whether separate permission is required.

5. Other than under the Fair Use doctrine, can I ever copy material freely without worrying about infringing someone's copyright?

**Answer:** Works in the public domain may be freely copied; however, collections and edited versions of works in the public domain may be protected by copyright. Works that are in the public domain include works whose term of copyright protection has expired. (See Appendix 1)

For copies of works distributed prior to March 1, 1989, absence of a notice of copyright does not necessarily indicate that the work might be in the public domain, and therefore freely copied, since a copyright owner may take steps to correct publication of his work without notice before the absence of notice results in loss of copyright protection for the work. (Other grounds may also excuse the omission of notice.) For works distributed on or after March 1, 1989, notice is not required. Consequently, the absence of notice cannot be relied upon to indicate that a work is in the public domain. Similarly, the fact that the author is deceased or the book is out of print does not mean that the work may be copied.

When in doubt about the status of a work, it is best to contact the publisher's copyright permission department to determine whether the work is still under copyright or in the public domain.

Certain works created by the U.S. Government, including documents prepared by an officer or employee of the federal government as part of that person's official duties, may also be freely copied. The right to copy U.S. government-created works without permission, however, does not extend to documents published by others with the support of U.S. Government funds, grants or contracts, or to portions of government documents which contain copyrighted material from other non-government sources, or fully to publishers' edited, annotated or compiled versions of such documents.

6. Can I copy a work and sell it to students through the campus bookstore if the material doesn't have a copyright notice?

**Answer:** As noted above, the absence of a copyright notice cannot be relied upon to indicate that the work may be freely copied without infringing anyone's copyright.

7. What if I request permission and I don't get a response?

**Answer:** If you don't receive a response to your request for permission, you cannot assume that you have been granted the necessary permission.

8. What can I do if a text has been ordered for a class but is late in arriving at the bookstore?

**Answer:** You may be able to obtain permission from the copyright owner to

photocopy a portion of the text until the book arrives. Each publisher has different procedures regarding such matters. You should contact the publisher to determine what procedures the publisher follows.

9. What are the penalties for copyright infringement?

**Answer:** Civil and criminal penalties may be imposed for copyright infringement. Civil remedies include an award of monetary damages (including substantial statutory damages, which in cases of willfulness may total up to \$150,000 per work infringed, or actual damages, including the infringer's profits), an award of attorney's fees, injunctive relief against future infringement and the impounding and destruction of infringing copies and the plates or other articles used in making such copies.

## WHEN WILL A PROTECTED WORK PASS INTO THE PUBLIC DOMAIN

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation)
Published before 1923	In public domain	None
Published from 1923 – 63	When published with notice	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 – 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

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

## CRITERIA TO DETERMINE “FAIR USE”

### Likely outcome of fair use

### Unlikely outcome of fair use

#### PURPOSE

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Teaching purposes                  |  | <input type="checkbox"/> Commercial purposes           |
| <input type="checkbox"/> Criticism or Comment               |  | <input type="checkbox"/> Entertainment only            |
| <input type="checkbox"/> Non-profit educational institution |  | <input type="checkbox"/> Used to make profit           |
| <input type="checkbox"/> Scholarship                        |  | <input type="checkbox"/> Personal use/Pleasure reading |

#### AMOUNT

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Amount appropriate for the purpose |  | <input type="checkbox"/> Large portion or entire work    |
| <input type="checkbox"/> Small portion of the whole         |  | <input type="checkbox"/> Main features, central portions |
| <input type="checkbox"/> One or few copies made             |  | <input type="checkbox"/> Repeated, long-term use         |
|   |  | <input type="checkbox"/> Numerous copies produced        |

#### NATURE

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Favored educational objective |  | <input type="checkbox"/> Highly creative work       |
| <input type="checkbox"/> Published                     |  | <input type="checkbox"/> Unpublished                |
| <input type="checkbox"/> Factual/Non-fiction           |  | <input type="checkbox"/> Fiction                    |
| <input type="checkbox"/> No licensing mechanism        |  | <input type="checkbox"/> Easy/affordable permission |
| <input type="checkbox"/> Lawfully owned or purchased   |  |   |

#### EFFECT

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Limited access granted to the work |  | <input type="checkbox"/> Work is made open to the public |
| <input type="checkbox"/> No significant effect on market    |  | <input type="checkbox"/> Significant effect on market    |

## RESOURCES

For general questions regarding this policy, please contact one of the following:

Office of General Counsel  
Western New England College  
1-413-782-1542

Student Activities  
Western New England College  
1-413-782-1203

D'Amour Library  
Western New England College  
1-413-782-1535

Law School Library  
Western New England College  
1-413-782-1457

Campus Bookstore  
Western New England College  
1-413-782-1284

For general information pertaining to copyright laws, please visit:

United States Copyright Office      [www.copyright.gov](http://www.copyright.gov)

Copyright Clearance Center      [www.copyright.com](http://www.copyright.com)