

# **WWU Use of Copyrighted Materials Policy**



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## **INTRODUCTION**

The introduction of copyrighted material is an issue of concern for the academic community. The impropriety of unauthorized copying is often overlooked by users in an educational setting.

Although copying all or a part of a work without obtaining permission may appear to be an easy and convenient solution to an immediate problem, such unauthorized copying frequently violates the rights of the author or the publisher of the copyright work. Unauthorized copying is contrary to the academic mission of teaching respect for the intellectual property of others.

Unauthorized copying places the university, copy centers, campus computer services, bookstore and faculty members at risk of legal action for engaging in illegal copying.

Western Washington University encourages faculty, staff and students to respect the intellectual property rights of others and to abide by copyright laws and guidelines. Western Washington University neither condones or authorizes copying in violation of U.S. Copyright Law (Title 17, U.S. Code and the Digital Millennium Copyright Act of 1998).

## **USE OF COPYRIGHTED MATERIALS**

How should members of the WWU community determine the fair use of copyrighted materials for teaching, scholarship and research? Four different bodies of law will help in making a fair use determination:

- ♦ The copyright section of the U.S. Constitution.
- ♦ The current copyright statute, the Copyright Act of 1976.
- ♦ Copyright decisions of the U.S. Courts.
- ♦ The Digital Millennium Copyright Act of 1998.

Copyright statutes give proprietary rights to copyright holders and give fair use rights to educational users. The copyright statute regulates the balance between the rights of the copyright holders and the rights of the users.

### **The rights of the copyright holders include:**

- ♦ The right to reproduce copies of the work in copies or phonorecords.
- ♦ The right to prepare derivative works based on the copyrighted work.
- ♦ The right to distribute copies or phonorecords of the work to the public by sale, lease, rental or lending.
- ♦ The right to publicly perform the work (literary, dramatic, musical, choreographic works, pantomimes, motion picture or audiovisual work).
- ♦ The right to publicly display the literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic or sculptural works, including motion picture or audiovisual work.
- ♦ The right to display sound recordings publicly by means of a digital audio transmission.

### **There are four types of use of a work:**

- ♦ Personal use of a copyrighted work for the intended purpose (reading a book).
- ♦ Infringing use that violates one of the rights granted to copyright holders in Section 106 of the copyright statute.
- ♦ Fair use is a use exception permitted by the copyright statute for the use of copyrighted material for such purposes as criticism, comment, news reporting, teaching or research.
- ♦ Constitutional use of public domain material (uncopyrightable). Everyone has a constitutional right to use material in the public domain without limitation, even if it is contained within a copyrighted work.

## **MATERIALS COVERED BY COPYRIGHT**

Copyright law protects authors of original works and applies to all forms of reproduction. Works may include musical, literary, dramatic and artistic products of expression. Copyright law protects any expression recorded in a tangible form in any medium, published or unpublished, from the moment of creation.

## **FAIR USE**

Under Section 107 of the Copyright Act of 1976, allowance is made for “fair use” for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship and research. Fair use is a use permitted by copyright statute that might otherwise be infringing. The law does not clearly define the boundaries of fair use, and it is necessary to make a decision based on the following four considerations:

**1. The purpose and character of the use, including whether such use is of a commercial nature or for non-profit educational purposes.**

Non-profit, educational or personal use tips the balance in favor of fair use. Commercial use tips the balance in favor of the copyright owner and asking permission to utilize the copyright. Uses such as criticism, commentary, newsreporting and parodies fall in the middle.

**2. The nature of the copyrighted work.**

Is the work factual, informative or creative? If the material is factual, the balance is in favor of fair use. If the material is creative, the balance shifts to asking for permission. Copying a commercial work meant for the educational market (workbooks, textbooks) is less likely to be considered fair use.

**3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.**

Amount is measured both qualitatively and quantitatively. Quantity must be evaluated relative to the length of the entire original and the amount needed to serve an objective. Use of a small amount of a work tips the balance towards fair use, a large amount tips the balance towards asking permission. Non-profit educational copying leans toward fair-use, commercial copying would require asking permission.

#### **4. The effect of the use on the potential market for or value of the copyrighted work.**

The greater the market effect, the less likely the use will be considered fair. If you make a use which substitutes for the purchase of an original copy, then this factor weighs against fair use. If the use is educational or research, market effect may be difficult to prove. If the use is commercial, adverse market effect is presumed.

All four factors must be considered in each instance of the use of copyrighted material. Educational use alone is not enough to constitute fair use in the opinions of the courts.

Fair use applies to all copyrighted works regardless of the presentation media: print, electronic or multimedia.

Fair use applies only to the use of the copyright, not of the work. When a work is copied and put on the market, the copyright is used. Without permission, such a use is an infringement. A copyright can only be used with permission or under the factors of fair use.

Attempts to limit the fair use rights with quantitative guidelines are without statutory authority. Copyright holders cannot override fair use provisions by broad copyright notices or other notification provisions on the work.

#### **CITATION OF THE SOURCE**

When material is copied from another copyrighted source, the source must be clearly identified. Copies must include the book or journal title, the volume or issue, the date of the material, the page numbers, the publisher and the copyright year on the first page of the material. When making multimedia presentations or digitizing Web material, credit must be given to the original source of any copyrighted material used.

## **USE OF COPYRIGHTED MATERIALS IN THE CLASSROOM**

### **A. Printed material**

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Any material copied from a copyrighted source must identify the source on the first page of the material and include a copyright notification.

#### **1. Classroom material - multiple copies for classroom use**

- a. Multiple copies may be made by or for the teacher giving the course, for the classroom use or discussion, provided the fair use criteria are met for each use. Copies made of non-fiction material(s) first published no more than four months earlier shall be presumptively deemed fair use.
- b. Only one copy per student in the class shall be copied.
- c. If the amount or content of material exceeds the fair use criteria, permission must be obtained.
- d. The copied material may be used only in one quarter and cannot be repeated from quarter to quarter without asking permission.
- e. There shall be no copying of or from works intended to be “consumable” in the course of study or teaching. These include workbooks, exercises, standardized test booklets, answer sheets and like consumable materials.
- f. Copying shall not substitute for the purchase of books, publisher’s reprints or periodicals.

#### **2. Student class manuals**

Student class manuals sold at the WWU Student Bookstore are available to any customer and access to student class manuals is not restricted to students enrolled in the class. Permission is required for copyrighted material included in a student class manual.

Permission is not required for copyrighted material(s) included in a student class manual where such material is non-fiction first published no more than four months earlier, provided the number of copies available at the Student Bookstore does not exceed the number of students enrolled in the class. Such use shall be confined to one quarter.

## **B. Video and Sound Recordings**

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Section 110 of the Copyright Act of 1976 allows the performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution in a classroom or similar place devoted to instruction, unless the performance or display is given by means of a copy that is not lawfully made and the person responsible for the performance knew or had reason to believe the copy is not lawfully made.

### **1. The performance or display must also meet the following conditions:**

- a. The performance or display must be for educational purposes for students and educators.
- b. The performance or display must be shown by students, instructors or guest lecturers.
- c. A copyrighted motion picture videotape can be shown in the classroom for instructional purposes if no admission fee is charged.
- d. The performance or display must be shown in a classroom or other school location.
- e. The performance or display must be shown in a face-to-face setting or where students and teachers are in the same building or general area.
- f. The copy used must be a legitimate copy with the copyright notice included. Copies of commercial copyrighted videotapes cannot be made and shown in the classroom without permission.
- g. Showing copies of a motion picture whose copyright has expired and charging admission fees is acceptable. If the copyright has not expired, charging admission is not acceptable without permission.

### **2. Making copies or recordings of broadcast programs must meet the following conditions:**

- a. Television programs may be recorded from broadcast or simultaneous cable transmissions to the general public, excluding premium pay programs (HBO, Showtime, Disney, etc.).
- b. Taped television programs may be shown once and repeated once for reinforcement within ten teaching days of the broadcast. The videotape can be retained for forty-five calendar days from the date of the broadcast.
- c. Recording must be made by the teacher or at the request of the teacher.

- d. Programs may not be re-recorded at a later date, regardless of the number of times it is rebroadcast.
- e. A limited number of copies may be made to meet the needs of several teachers.
- f. Programs need not be used in their entirety but may not be edited or electronically altered or combined.
- g. All copies must include the copyright notice as it appears in the program.
- h. Institutions are expected to implement appropriate control procedures.
- i. Copies of commercial copyrighted video tapes cannot be made and shown in the classroom.

### **C. Multimedia Projects**

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These guidelines apply to the use of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprofit educational institutions.

#### **1. Classroom presentation**

- a. Instructors and students may perform and display their own educational projects or presentations for instruction.
- b. Educators may incorporate portions of lawfully acquired copyrighted works when producing their own educational multimedia projects for their own teaching tools in support of curriculum-based instructional activities at educational institutions.
- c. Educators may perform and display their own educational multimedia projects created for curriculum-based instruction to students in the following situations:
  - .. Face-to-face instruction
  - .. Assignment to students for directed self-study
  - .. Remote instruction for students enrolled in curriculum-based courses and located at remote sites, under the restrictions listed below (Portion Limitations).
- d. Educators may perform or display their own educational multimedia projects in presentation to their peers, for example, at workshops and conferences.
- e. Educators may retain educational multimedia projects created under these guidelines in their personal portfolios for later personal uses such as tenure review or job interviews.

## **2. Portion Limitations**

Be conservative. Use only small portions of the copyrighted work of others.

## **3. Copies**

Do not make any unnecessary copies of the multimedia work.

## **4. Citations**

- a. Include any copyright notice and copyright ownership information on the original material.
- b. Include appropriate citations and attributions to the source.
- c. Include a notice on the opening screen of the multimedia project, a notice that certain materials are included under the fair use exemption of U.S. Copyright law and have been prepared according to the fair use guidelines and are restricted from further use.

## **5. Electronic transmission or broadcast of classroom presentation**

- a. Instructors may broadcast multimedia presentations for remote instruction to students enrolled in curriculum-based courses and located at remote sites over the institution's secure electronic network, provided there are password access limitations and there are technological limitations preventing the making of copies.
- b. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the quarter

## **6. Videotaping and broadcast of classroom presentations**

Videotaping of multimedia projects is acceptable for educational purposes such as student review or instruction.

## **7. Future use beyond Fair Use**

Educators and students are advised to obtain copyright permission if their multimedia project containing copyrighted material could have broader dissemination beyond individual classroom use. It is strongly recommended that permission be obtained during the development process for each copyrighted piece rather than waiting until the completion of the project. Permission after completion is often much more difficult to obtain.

## **D. Music**

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### **1. Copying or performance of music in the course of educational activities.**

- a. It is permissible to make emergency copies to replace purchased copies which for any reason are not available for an imminent performance, provided purchased replacement copies are substituted in due course. Copying of sheet music or entire works can only be done for performances in emergencies.
- b. For academic purposes other than performance, copies of excerpts of works may be made provided the excerpts do not comprise a performable unit (example: section, movement or aria).
- c. The number of copies made should not exceed one copy per student.
- d. A single copy of a performable unit (section, movement or aria) may be made if the work is out of print or unavailable except in a larger work for an instructor's scholarly research or in preparation for teaching a class.
- e. All copies of printed works must include the copyright notice that appears on the original.

### **2. Recordings**

- a. Record student performances only for teacher or institutional evaluation or student portfolio.
- b. Make one copy of sound recordings for classroom or reserve room use only.

## **E. Distance Education**

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More attention has recently been directed to copyright fair use in alternative classroom teaching methods (Web sites, broadcast transmission of videotaped material, digital streaming). The U.S. Copyright Office has completed a report examining the issues surrounding the use of copyrighted works in distance education. Revisions to current law have been proposed and are under review by Congress.

In general, for the preparation of distance education material, in addition to applying the fair use criteria:

- ♦ Limit electronic access to the students enrolled in the class and administrative staff as needed.

- ♦ Terminate access at the completion of the class.
- ♦ Include copyright statement at the beginning of all distance education transmissions.
- ♦ Obtain permission for materials that will be used repeatedly by the same instructor for the same class.
- ♦ Obtain permission in advance for distance education material which has a potential of distribution beyond a single class or outside the university.

## **F. Computer software**

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Computer software is protected by copyright law. Under the law, you may make one archival copy for back-up purposes only. Other copying of computer software is prohibited by copyright law, with the general rule being “one licensed copy of software per one computer”.

Fair use does not apply to computer software because there is generally no way to use “only part” of a software program. Most commercial software comes with a license agreement which controls the terms of the use of the program. The terms of the license agreement are usually very specific and should be referred to if there is a question about whether copying is allowed.

## **G. Library reserves**

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At the request of a faculty member, a library may photocopy and place on reserve selections from copyrighted works within the same restrictions governing the distribution of copyrighted materials in the classroom.

If a request asks for one copy of material to be placed on reserve, the library may copy an entire article, an entire chapter or an entire poem. If the excerpt is larger, the original copy of the entire work may be placed on reserve.

The use of the copy in the library reserve is limited to one quarter. Material to be held on reserve for more than one quarter will require permission of the copyright owner.

## **H. Library copying**

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A library is allowed to make copies of copyrighted materials for its patrons under the following conditions:

- ♦ One copy can be made of a work if the copy is made without any purpose of direct or indirect commercial advantage, if the collections of the library are open to the public or to researchers, and if the reproduction includes a notice of copyright.

- ♦ One copy can be made of an entire work or a substantial portion made from a collection of the library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price. The copy must become the property of the user and the library or archive has no notice that the copy or phonorecord would be used for any other purpose other than private study, scholarship or research.
- ♦ The library displays prominently, at the place where orders are accepted and includes on its order form, a warning of copyright in accordance with requirements that the register of copyrights shall prescribe by regulation.
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