

TABLE OF CONTENTS

General Information

1. Introduction..... 3

2. The Meaning and Purpose of Copyright..... 4

3. Kinds of Works That Are Protected by Copyright ..... 6

4. Works “Made for Hire” ..... 7

5. When Copyright Permission is Needed ..... 8

6. When Works Pass into the Public Domain..... 9

7. The Fair Use Exemption..... 10

8. Checklist for Fair Use ..... 122

9. How to Get Copyright Permission to Use a Work ..... 133

10. Sample Permission Request Letter..... 144

11. If You Violate Copyright..... 155

12. Managing Your Own Copyright ..... 166

13. Copyright Notices and Warnings..... 188

Specific Guidance

14. Blackboard (course management software)..... 199

15. Chapel Services..... 222

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16. Classroom Activities .....	244
17. College Publications—In Print and Online .....	255
18. Computer Software .....	277
19. Concerts / Film Screenings / Plays .....	288
20. Conservatory E-Portfolios .....	31
21. Course Packs (Sold in Bookstore) .....	322
22. Non-Curricular—File Sharing or Copying CDs / DVDs / Documents / Other Media .....	333
23. Non-Curricular—Personal Web Pages .....	344
24. Non-Curricular—Posters / Signs.....	355
25. Reproductions by Libraries and Archives .....	366
26. Reproductions for Persons with Disabilities .....	388
27. WETN Radio / TV .....	399

## I. Introduction

The purpose of this guide is to provide information to faculty, staff, and students at Wheaton College about how to comply with U.S. copyright law.

Knowing the law and applying it in good faith enables us to exercise with confidence the rights we have as users of copyrighted works. This exercise enables our academic and campus life to flourish. Knowing the law also helps those of us who are authors and creators to understand and manage our own copyrights.

Unless a footnote states otherwise, all quotations in this guide are taken from the *U.S. Copyright Act*, Title 17, U.S. Code, as amended. The full text of the Act is available at <http://lcweb.loc.gov/copyright/title17>.

This guide was not written by a lawyer. It provides a lay understanding of complex legal matters. For help in specific circumstances, please consult one of the people named below, who will seek legal advice as necessary.

### General queries:

Lisa Richmond, Buswell Library, x5101, [Lisa.Richmond@wheaton.edu](mailto:Lisa.Richmond@wheaton.edu)

### Blackboard (course management software):

Julie Giles, Media Resources, x5334, [Julie.Giles@wheaton.edu](mailto:Julie.Giles@wheaton.edu)

### Course packs:

Copy Center (in Bookstore), x5111, [copy.center@wheaton.edu](mailto:copy.center@wheaton.edu)

### Digital Millennium Copyright Agent for Wheaton College:

Terry Huttenlock, Buswell Library, x5352, [Terry.Huttenlock@wheaton.edu](mailto:Terry.Huttenlock@wheaton.edu)

## 2. The Meaning and Purpose of Copyright

Copyright is a limited, statutory monopoly granted to creators of “original works of authorship fixed in any tangible medium of expression.” It comes into effect automatically at the time the work is created.

Copyright law governs more than just copying. It establishes the rights that creators have in relation to their works, as well as the rights others may have to reproduce, distribute, modify, display, or perform them. Copyright is best understood as a bundle of rights, each of which may be exercised independently.

Copyright exists to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries.”

*U.S. Constitution, art. 1, sec. 8*

“The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.”

Supreme Court Justice Sandra Day O’Connor<sup>2</sup>

“The constitutional purpose of copyright is to facilitate the flow of ideas in the interest of learning. The primary objective of our copyright law is not to reward the author, but rather secure for the public the benefits from creations of authors.”

U.S. House Report, Berne Convention Implementation Act of 1988<sup>3</sup>

### Global reach of the law

Because of international treaties the U.S. has signed, works created or published in countries other than the United States are subject to U.S. copyright law when used in the United States.

### Length of copyright

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<sup>2</sup> Quoted in Carrie Russell, “Current Copyright Issues Facing Academic Librarians,” a seminar offered by the American Library Association, 2004.

<sup>3</sup> Ibid.

Generally speaking, copyright lasts for the life of the author or creator, plus seventy years. Once this time is passed, works are said to enter the “public domain.” For more information, see chapter six of this guide, “When Works Pass into the Public Domain.”

### **Copyright versus physical ownership**

The copyright adhering to a work is not the same as ownership of a particular copy of that work. For example, if you own a musical recording you may sell or give it away, but you may not copy it unless your copying can be justified by an exemption granted in the law.

### **Copyright versus plagiarism**

Respecting copyright is not the same as giving proper attribution to the author or creator of a work you use. For example, it may be a violation of copyright to post on your Web site some material (text, image, etc.) that you copied from elsewhere on the Web, even if your posting clearly states the source of that image.

### **Copyright law versus contract law**

Licensed works are governed by contract law. Contract law generally supersedes the provisions of copyright law and may give users more or fewer rights than the copyright law does.

### 3. Kinds of Works That Are Protected by Copyright

Copyright law covers all “original works of authorship fixed in any tangible medium of expression,” whether published or unpublished.

A work is considered *original* if it “embodies some minimum amount of creativity.”<sup>4</sup> For example, a how-to manual or a particular arrangement of data may be considered original works.

*Fixed* means that the work exists in a form that has “more than transitory duration.” A cake decorated with a Happy Birthday message is unlikely to be fixed, but a Web site almost certainly is.

*Tangible medium of expression* refers to what can be seen, heard, or felt, either directly or with the assistance of a machine or device now known or later developed.

Such works include, for example:

- Literary works (this designation covers works composed of words and/or numbers, such as books, articles, Web sites, and software programs)
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audio-visual works
- Sound recordings
- Architectural works

Copyright protection does not extend to:

- Facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries. Note however that a particular *expression* or *arrangement* of facts, ideas, etc., may be protected.
- Works of the U.S. federal government or any U.S. federal government employee acting within the scope of his/her employment
- Works in the public domain
- Works for which copyright has expired (thus in the public domain)

Use the information in chapter 6 of this guide, “When Works Pass into the Public Domain,” to determine the copyright status of the work you wish to use.

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<sup>4</sup> Kenneth D. Crews, *Copyright Essentials for Librarians and Educators* (Chicago: American Library Association, 2000), 9.

#### 4. Works “Made for Hire”

Works “made for hire” are created by an employee within the scope of his or her employment. Administrative reports, committee minutes, the college catalog and magazine, this copyright guide, and software programs written for college activities are all examples of works “made for hire.” The college is deemed to hold the copyright to such works.

As an important exception to this doctrine, many educational institutions consider that the copyright to scholarly works created by faculty (such as books, articles, musical compositions, and art, as well as course notes, lectures, and exams) generally belongs to the faculty member. The college and the faculty member may enter into an agreement at any time to reassign the copyright.

College administrators are advised to consider the question of copyright when using the services of independent contractors. Independent contractors are generally not considered employees for copyright purposes, and thus their work is not “made for hire.” For example, a film production company that is hired to make a promotional film about the college will retain copyright of that film unless it assigns the copyright to the college. Make sure the rights that will be assigned to the college are clearly stated, in writing, before such projects begin.

## 5. When Copyright Permission is Needed

Follow these steps to determine whether you need to get copyright permission in order to reproduce, distribute, modify, display, or perform a particular work. In addition, please consult chapters 14 through 28 of this guide for more specific information.

1. Is the work subject to a license agreement? Check the item itself and any accompanying documentation. The terms of the license agreement generally supersede copyright law.
2. If the work is not subject to a license agreement, is it in the public domain? See chapter 6 of this guide, “When Works Pass into the Public Domain.” Works in the public domain have no copyright restrictions.
3. If the work is not in the public domain, has permission for your intended use already been granted by the copyright owner?

If you wish to post a journal article in Blackboard, for example, check the copyright page of the journal issue/volume, or the publisher’s Web site, to see if the publisher has already granted permission for educational uses such as this.

If you are the author of a journal article, visit <http://www.sherpa.ac.uk/romeo> to determine whether the publisher automatically grants permission for your use.

Documents marked with the following symbols automatically grant permission for certain uses. For more information, see <http://creativecommons.org>.



4. If the work is not in the public domain, is your intended use justified by Fair Use? See chapter 7 of this guide, “The Fair Use Exemption.”
5. If none of the above applies, is there a particular copyright exemption given in the law, applying to your intended use? These exemptions are described in chapters 14 through 28 of this guide.
6. If none of the above applies, you must get permission from the copyright holder. See chapter 9 of this guide, “How to Get Copyright Permission to Use a Work.”



## 6. When Works Pass into the Public Domain

From Carrie Russell, *Complete Copyright: An Everyday Guide for Librarians* (American Library Association, 2004). Used by permission.

Time of Publication	Conditions	Public Domain Status
Before 1923	None	In public domain
Between 1923 and 1978	Published without a copyright notice	In public domain
Between 1978 and 1 March 1989	Published without a copyright notice, and without subsequent registration	In public domain
Between 1978 and 1 March 1989	Published without a copyright notice, but with subsequent registration	70 years after author's death*
Between 1923 and 1963	Published with copyright notice, but copyright was not renewed	In public domain
Between 1923 and 1963	Published with copyright notice and copyright was renewed	95 years after publication date
Between 1964 and 1978	Published with copyright notice	70 years after author's death*
Between 1978 and 1 March 1989	Published with copyright notice	70 years after author's death*
After 1 March 1989	None	70 years after author's death*

\* If the work is of corporate authorship, copyright endures for the shorter of 95 years from publication, or 120 years from creation.

## 7. The Fair Use Exemption

Many activities of college life may fall under the Fair Use exemption of the Copyright Act. This exemption states, in part:

“The fair use of a copyrighted work, including such use by reproduction in copies . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (b) the nature of the copyrighted work;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

§107, *Copyright Act*

### How to Apply Fair Use

Fair Use is a balancing test; each situation must be decided by analysis of the four factors. To date, the courts have provided little guidance in the interpretation of Fair Use in college contexts. It is generally understood, however, that no one factor is automatically given more weight than another, and a use that is opposed by some of the factors may still be justified if the other factors favor it.

Congress has stated that “the doctrine [of Fair Use] is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts.”<sup>5</sup> The more clearly each factor favors your intended use, the more confident you may be that the use is fair.

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<sup>5</sup> House Committee on the Judiciary, Report on Copyright Law Revision, 94th Congress, 2d session, 1976, House Report 94-1476, 65. Quoted in United States Copyright Office, *Circular 21*, “Reproduction of Copyrighted Works by Educators and Librarians.” Cp. Kenneth D. Crews, “Rules about word counts and percentages have no place in the law of fair use. At best, they are interpretations intended to streamline fair use.” *Copyright Essentials for Librarians and Educators*, 55.

A helpful amplification of the four factors is provided in chapter 8 of this guide, “Checklist for Fair Use.” This checklist has no legal standing, however, and does not replace the need for you to apply “an equitable rule of reason” in any given situation. To assist you, sample scenarios have been included in most of the chapters of this guide that address specific situations.

## 8. Checklist for Fair Use

Modified from Carrie Russell, *Complete Copyright: An Everyday Guide for Librarians* (American Library Association, 2004). Used by permission.

See chapter 7 of this guide, “The Fair Use Exemption,” for assistance in interpreting this checklist.

**Fair Use more likely**

**Fair Use less likely**



**Purpose:**

Teaching (including multiple copies for classroom use)  
 Research or scholarship  
 Nonprofit educational institution  
 Criticism or comment  
 News reporting  
 Parody  
 Transformative or productive uses (changes the work for new utility)  
 Restricted access (to students or other appropriate group)

Commercial activity  
 Profiting from the use  
 Entertainment  
 Bad-faith behavior  
 Denying credit to original author

**Nature:**

Published work  
 Factual or nonfiction based  
 Important to favored educational objectives

Unpublished work  
 Highly creative work (art, music, novels, films, plays)  
 Fiction

**Amount:**

Small quantity  
 Portion used is not central or significant to entire work  
 Amount is appropriate to favored educational purpose

Large portion or whole work used  
 Portion used is central to work or the “heart of the work”

**Effect:**

User owns lawfully acquired or purchased copy of original work  
 One or few copies made  
 No significant effect on the market or potential market for copyrighted work  
 No similar product marketed by the copyright holder  
 Lack of licensing mechanism

Could replace sale of work  
 Significantly impairs market or potential market for work or derivative  
 Reasonably available licensing mechanism  
 Affordable permission available for using work  
 Numerous copies made  
 You made it accessible on the Web or in other public forum  
 Repeated or long term use

## 9. How to Get Copyright Permission to Use a Work

Before following these steps, please consult chapter 5 of this guide, “When Copyright Permission is Needed.”

1. For public performance of an audio-visual work, please contact Buswell Library’s video coordinator, x5620, [video.coordinator@wheaton.edu](mailto:video.coordinator@wheaton.edu). For public performance of a stage play, consult with faculty members in the Communication department.
2. For all other purposes, identify the copyright holder. Many works provide this information in a copyright notice on the item itself. The records of the U.S. Copyright Office may be searched at <http://www.copyright.gov>. Stanford University Library also makes available a database of copyright-renewal records at <http://collections.stanford.edu/copyrightrenewals>.
3. If the copyright holder can be identified, look for instructions on the holder’s Web site. If the copyright holder does not provide instructions or if the holder is an individual, send a written letter as shown in chapter 10 of this guide, “Sample Permission Request Letter.”
4. If the copyright holder or contact information cannot be identified, place your request through the Copyright Clearance Center (<http://www.copyright.com>) or:

### **Music:**

American Society of Composers, Authors and Publishers <http://www.ascap.com/licensing>  
Broadcast Music, Inc. <http://www.bmi.com/licensing>  
SESAC [http://www.sesac.com/licensing/obtain\\_a\\_license.aspx](http://www.sesac.com/licensing/obtain_a_license.aspx)

### **Films:**

Motion Picture Licensing Corporation <http://www.mplc.org>

### **Plays:**

Dramatists Play Service, Inc. <http://www.dramatists.com/text/licensing.html>  
Baker’s Plays <http://www.bakersplays.com>

5. The copyright holder may decide to charge you for permission. You are free to negotiate the price. Permissions received through agencies will almost certainly come with a non-negotiable fee.
6. Keep records of all correspondence. If you receive oral permission from the copyright holder, follow up with a written confirmation.
7. It is good form to publicly thank copyright holders for permissions received. This is often done in an acknowledgements section of the new work you create or publish.
8. Note that failure to receive permission (for example, when the copyright holder does not respond to your request) does not necessarily justify the use of a work.

## 10. Sample Permission Request Letter

[if sending via postal mail, include a self-addressed, stamped envelope]

[date]

[copyright owner's or agent's name and address]

Dear [copyright owner or agent]:

I am writing to ask your permission to use [give full citation of the work] for the purpose of [describe the intended use in sufficient detail].

Please complete and return this form to me at your earliest convenience. Thank you very much for your consideration.

Sincerely yours,

[your name, position, and contact information]

I do \_\_\_\_\_ do not \_\_\_\_\_ grant permission for my work to be used for the purpose stated above.

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

## **I I. If You Violate Copyright**

Who's responsible?

According to the law, responsibility to avoid violating copyright rests primarily upon you, not the college. It is important therefore that you make a good-faith effort to understand the law and comply with it.

### **What if your good-faith efforts prove wrong?**

The only way to know for sure that you've applied the law incorrectly would be a court ruling against you. It is reassuring to know, however, that college employees acting within the scope of their employment will not be held liable for the statutory damages of copyright infringement if they "reasonably believed and had reasonable grounds for believing that [their] use was fair use" (§504 c. 2, *Copyright Act*).

### **What if you are notified that you have violated copyright?**

The responsibility to monitor copyright compliance rests with the copyright holder. If a copyright holder believes that you have violated copyright, that person or his/her lawyer will most likely send you a "cease and desist" letter. If you receive such a letter but do not wish to comply because you believe your use is justified under the law, please notify Lisa Richmond, x5101, [Lisa.Richmond@wheaton.edu](mailto:Lisa.Richmond@wheaton.edu). In some cases, the college may choose to get legal advice.

## 12. Managing Your Own Copyright

### Contracts with Publishers

When your book, article, image, or other work is accepted for publication, the publisher will give you a contract to sign. This contract usually transfers to the publisher all copyright of your work. The publisher is granted not only the exclusive right to publish your work, but also the exclusive right to enter into contracts or give permission for future uses of your work (such as its inclusion in a database such as *JSTOR*, its re-publication, or use by individual people) and to charge permission fees for such uses. Once you transfer your copyright to a publisher, even you, the author, must seek the publisher's permission for uses beyond what is permitted by Fair Use and the other exemptions specified in the law.

Although it may prove difficult, you are entitled to negotiate the contract. For example, you may want to assign to a publisher the right to publish your article in a scholarly journal, but reserve the right to make your article available on the Web in a publicly accessible archive after a certain length of time has passed.

Some publishers permit professors and students to freely copy works or parts of work for many academic uses. Other publishers have restrictive policies and require high permission fees. Consider the model you want to support. Copyright is one consideration among many to bear in mind when deciding which publishers to consider for your own publications.

This is not to say that publishers who charge permission fees are acting unfairly. Each publisher has a legitimate interest in how the works it publishes are made available and used, and at what price. The copyright law is concerned with balancing the interests of copyright holders and users of copyrighted works, in order to “promote the progress of science and the useful arts” (see chapter 2 of this guide, “The Meaning and Purpose of Copyright”). The better you understand copyright law, the better equipped you are to encourage publishers to maintain this balance.

### Registering Your Copyright

To register your copyright, follow the instructions provided by the U.S. Copyright Office at <http://www.copyright.gov>. As of this writing, the registration fee is \$35.

It is not necessary to register your copyright in order to assert it. It is recommended that you do so, however, for the following reasons:

- If you want to encourage people to seek your permission for uses beyond what the law grants them, you should make it possible for them to find out who you are and how you may be reached.
- If you do not register your copyright with the U.S. Copyright Office, you may not be able to collect damages in the event of a lawsuit.



## Granting Permissions

As a copyright holder, you may assign or license all or some of your rights to others. For example, you may decide to allow unlimited copying and distribution of your work with the proviso that the uses made of it be strictly non-commercial. Or, you may allow one theatre club to perform your play but not give permission to other clubs.

If you retain copyright to your work, consider marking it with a Creative Commons license in order to provide potential users with information about the types of uses you are willing to grant automatically. This will obviate the need for the user to get in touch with you to ask permission for those uses, and may help make your work more widely known and used. For more information, please consult <http://www.creativecommons.org/license>.

Exclusive rights must be granted in writing, but nonexclusive rights (that is, rights you may give to more than one party) can be granted orally as well as in writing.

## Joint Copyright

You may hold copyright jointly with other creators or authors of a work. In such cases, the parties are free to exercise their rights independently, including the right to grant *non-exclusive* rights to new parties, as long as profits are shared equally. One party cannot re-assign copyright or grant an *exclusive* right to new parties, however, without the consent of the others.

If you embark upon a work of joint authorship, you are advised to consider the copyright question carefully. You and your colleague(s) should put your copyright agreement in writing, before the project begins.

### 13. Copyright Notices and Warnings

#### Notice for interlibrary-loan orders and copies made for library patrons:

This notice must be printed prominently on interlibrary-loan order forms and posted at locations where copies are made for patrons.

Notice: Warning concerning copyright restrictions. The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship or research. If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of Fair Use that user may be liable for copyright infringement. This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.<sup>6</sup>

#### Notice for copies made for purposes of Blackboard, conservatory e-portfolios, course packs, and reproductions by libraries and archives:

This notice must be affixed to copies made, unless the copy already contains a notice of copyright.

This material may be protected by copyright.

A better notice, recommended especially for works delivered via Blackboard or course packs:

This material is made available for the educational purposes of students enrolled in [course] at Wheaton College. The material is subject to U.S. copyright law and is not for further reproduction or transmission.<sup>7</sup>

#### Notice for copying equipment:

This notice must be posted on or near all photocopiers and other similar equipment on campus.

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement. For more information, please consult the Wheaton College Copyright Guide on the college web site.

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<sup>6</sup> Code of Regulations, Title 7, §201.14.

<sup>7</sup> Suggested in Kenneth D. Crews, *Copyright Essentials for Librarians and Educators*, 71.

## 14. Blackboard (course management software)

This chapter describes how you may use documents (book chapters, journal articles, etc.), audio, video, or images in Blackboard.

For assistance, please contact Julie Giles, Blackboard Administrator, Media Resources, x5334, Julie.Giles@wheaton.edu.

Note: The application of Fair Use to the provision of course readings in particular is a highly contested area of copyright law. The following policy is based upon an extensive lay review of existing case law, opinions published by lawyers, and the official positions of such parties as the Association of American Universities, Association of Research Libraries, Association of American University Presses, and Association of American Publishers. Some aspects of our policy, such as the status of book chapters and the five-article limit, are not given in the text of the law, but represent what we believe is a moderate yet assertive understanding of the spirit of the law.

1. You may create a link in your Blackboard course to a copy of the work that is available elsewhere on the Web. For example, you may wish to create a link to a journal article that is available online through Buswell Library. In such cases, no copyright consideration comes into play. To determine which articles are available online, or for help creating the link, please consult a librarian, x5169, reference@wheaton.edu.
2. If linking is not possible, follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows:
  - a) Copies of book chapters and journal articles may be posted without getting permission, subject to the following limitations.

Copyright permission is required for:

    - Book chapters (or parts of books) equal to about 20% or more of the whole book. Apply this rule to single-author books and to edited volumes.
    - Each journal article when the number of articles for the course exceeds 5. (For this volume of readings, please note also that Wheaton students indicate a preference for course packs sold at the Bookstore. See chapter 21 of this guide, “Course Packs”).
  - b) Copies of dramatic literary or musical works, such as stage plays, operas, and audio-visual recordings, may be used “in an amount comparable to that which is typically displayed in the course of a live classroom session.”
3. If copyright permission is required for any material you post, you must provide the Bookstore with a bibliography of these materials at the time they are posted to your course (or earlier, if possible). The Bookstore will determine any copyright fees owing, and Student Accounts will post the fees directly to each enrolled student’s account. Send the bibliography to copy.center@wheaton.edu.

Please do not post material in Blackboard that you are also including in a course pack, as this will result in higher costs for your students.

4. Materials posted in Blackboard:

- Must not substitute for the purchase of books or other materials readily available on the market for a fair price.
- Must not be copies of works that are marketed “primarily for the purpose of display as part of mediated instructional activities transmitted via digital networks.” In other words, where such works already exist, they should be purchased.
- Must include a notice of copyright, or in the absence of a notice, a warning that the material may be protected by copyright. For the wording of notices and warnings, see chapter 13 of this guide, “Copyright Notices and Warnings.”
- Must not be made from a copy that was not lawfully made and that you knew or had reason to believe was not lawfully made.
- You must not engage in any activities that would decrypt or otherwise interfere with technological measures already employed by the copyright holder to prevent retention or unauthorized distribution of the work.

### Sample Scenarios

Q: I have created some course Web pages outside of Blackboard. Is it OK for me to post copyrighted documents there for my students to read online and/or download?

A: No. The college interprets such activities as falling outside the scope of Fair Use and other copyright exemptions described in this chapter. You must get permission of the copyright holders before posting documents in this way.

Fair Use analysis:

<i>Purpose</i>	Favorable. The use is being made at a nonprofit educational institution for the purpose of teaching, research, or scholarship.
<i>Nature</i>	Moderately favorable. The documents (let us assume) have been previously published and are factual or nonfiction works.
<i>Amount</i>	Moderately unfavorable. The whole work is being posted.
<i>Effect</i>	Unfavorable. Making the documents freely and publicly available online could replace sale of the work or significantly impair the market or potential market for the work. (This is the decisive factor in our overall determination against Fair Use in this scenario, based on the college’s understanding of U.S. case law.)

Q: As one of the assignments in my Communication course, I want my students to watch a video of a political speech and analyze it rhetorically. Can I post a copy of the video in Blackboard?

A: Yes. The college considers this an instance of Fair Use since. Note also that you could place a copy of the video on reserve at the library.

Fair Use analysis:

- Purpose* Favorable. The use is being made at a nonprofit educational institution for the purpose of teaching, research, scholarship, criticism or comment. Blackboard restricts access to only your students.
- Nature* Moderately favorable. The video (let us assume) has been previously published and is factual or nonfiction.
- Amount* Moderately favorable. The whole work is being posted, but this length is appropriate to the favored educational purpose. It will be displayed “in an amount comparable to that which is typically displayed in the course of a live classroom session.”
- Effect* Favorable. This use does not significantly impair the market or potential market for the work, since we assume that you would not otherwise require your students to buy a copy of the video. Blackboard restricts access to only your students.

## 15. Chapel Services

This chapter describes how you may use works in chapel services.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

The following is not an infringement of copyright:

“Performance of a nondramatic literary or musical work [such as the words and music of a hymn] or of a dramatico-musical work of a religious nature [such as a Christmas cantata], or display of a work, in the course of services at a place of worship or other religious assembly.”

§110 (3), *Copyright Act*

### Sample Scenarios

Q: May I project a passage of Scripture on the screen during a chapel service, taken from any version of the Bible? May I project the words and music of a hymn or praise song? May I project images taken from the Web or elsewhere?

A: Yes. These uses are permitted by §110 (3) of the Act.

Q: May I show a clip from an audio-visual work during a chapel service?

A: Yes. We consider a clip to be an instance of Fair Use, in addition to whatever rights are afforded by the copyright exemption given in this chapter.

Q: May I photocopy the sheet music for all of the performers participating in a chapel service?

A: We must distinguish between the original work, which may be in the public domain, and the sheet music of that original work, which may be protected by copyright. If the sheet music is protected, its distribution in photocopies is not justified by §110 (3) of the Act and probably not by the Fair Use exemption. You should either buy adequate copies of the sheet music or get the copyright owner’s permission to make the photocopies.

Fair Use analysis:

*Purpose* Favorable. The use is being made at a nonprofit educational institution.

*Nature* Unfavorable. The music to be performed is a highly creative work.

*Amount* Unfavorable. The whole work is being copied.

*Effect* Unfavorable. The photocopying would replace sale of the work and numerous copies would be made. A mature market exists to supply sheet music to musicians.

## 16. Classroom Activities

This chapter describes how you may use works in the classroom. The law provides broad permission for most classroom activities.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

The following is not an infringement of copyright:

“Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audio-visual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made . . . and that the person responsible for the performance knew or had reason to believe was not lawfully made.”

*§110 (1), Copyright Act*

### Sample Scenarios

Q: I use PowerPoint slides to supplement my course lectures. May I include on them cartoons, graphs, or other images that I copied from elsewhere?

A: Yes. This use is justified by the copyright exemption described in this chapter. But be sure to exercise good scholarly practice by citing your sources.

Q: May I show a documentary or play a piece of music in class?

A: Yes. These uses are justified by the copyright exemption described in this chapter.



## 17. College Publications—In Print and Online

This chapter describes how the creators or editors of college publications (including student publications) may use works.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

### Sample Scenarios

Q: Can I publish in the Wheaton magazine a brief excerpt from a copyrighted work?

A: Yes. A brief excerpt is justified by Fair Use. But be sure to exercise good practice by citing the source.

Fair Use analysis:

*Purpose* Favorable. The use is being made at a nonprofit educational institution and the magazine is sent free to its readers. The purpose is criticism, comment, or news reporting.

*Nature* Favorable. The use is important to the college’s educational objectives.

*Amount* Favorable. A small quantity of the work is being used, and the amount is appropriate to the college’s educational purpose.

*Effect* Favorable. Use of the excerpt has no significant effect on the market or potential market for the copyrighted work.

Q: Can I publish in the Wheaton magazine a previously unpublished letter that is held in the college archives?

A: Do your best to get the copyright owner’s permission first (in this case, likely the author’s heir). See chapter 9 of this guide, “How to Get Copyright Permission to Use a Work.” Then be sure to exercise good practice by citing the owner’s copyright and stating that the letter is used with his/her permission.

Fair Use analysis:

*Purpose* Favorable. The use is being made at a nonprofit educational institution and the magazine is sent free to its readers. The purpose is criticism, comment, or news reporting.

*Nature* Unfavorable. The letter is unpublished.

*Amount* Unfavorable. A large portion or the whole letter will be used.

*Effect* Favorable. The letter in the college archives was lawfully acquired. Use of the letter likely has no significant effect on the market or potential market for the copyrighted work.

Q: Can I publish a photo in *Kodon*?

A: Get the photographer's permission first. Then be sure to exercise good practice by citing the photographer's copyright and stating that the photo is used with his/her permission.

Fair Use analysis:

*Purpose* Favorable. The use is being made at a nonprofit educational institution and *Kodon* is not produced for financial gain. The purpose of *Kodon* is educational.

*Nature* Unfavorable. The photo is an unpublished and highly creative work.

*Amount* Moderately unfavorable. You want to publish the photo in its entirety, although the amount used is appropriate to the educational objective.

*Effect* Moderately unfavorable. Numerous copies of *Kodon* are being printed.

Q: Do any of the above judgments change if the Wheaton magazine or *Kodon* is posted online?

A: No. The judgment remains the same.

## 18. Computer Software

This chapter describes how you may use computer software.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

You may:

- Make a “backup” copy to protect software against damage or deletion.
- Modify software to enable it to be used on a particular computer.

But you may not:

- Engage in any activity that would decrypt or otherwise interfere with technological measures already employed by the copyright holder to prevent retention or unauthorized distribution of the work.

*§117, Copyright Act*

## 19. Concerts / Film Screenings / Plays

This chapter describes how you may display or perform works such as music, audio-visual works, and stage plays in a public setting.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

Note: Determining the copyright status of music may be complicated by the fact that the music itself as well as the audio recording, sheet music, score, libretto, etc., are each considered a “work” and may be copyrighted separately.

In this chapter, *public* refers to a group substantially larger than one’s own circle of family and friends.

1. The public performance of a non-dramatic literary or musical work (such as a symphony) is permitted, as long as:
  - a) There is no admission fee, or, if admission is charged, the proceeds are used exclusively for educational, religious, or charitable purposes, *and*
  - b) The performers or organizers are not paid
  
2. The public performance of a dramatic literary or musical work (such as a stage play, opera, or feature film) is permitted, as long as:
  - a) The primary purpose of the performance is educational, *and*
  - b) There is no admission fee, or, if admission is charged, the proceeds are used exclusively for educational, religious, or charitable purposes, *and*
  - c) The performers or organizers are not paid, *and*
  - d) The copy (e.g. of the film being shown) was lawfully made

OR

  - a) The primary purpose of the performance is entertainment, *and*
  - b) The college has public performance rights for the work (see chapter 9, “How to Get Copyright Permission to Use a Work”), *and*
  - c) There is no admission fee, or, if admission is charged, the proceeds are used exclusively for educational, religious, or charitable purposes, *and*

- d) The performers or organizers are not paid, *and*
- e) The copy (e.g. of the film being shown) was lawfully made

§110 (4), *Copyright Act*

### Sample Scenarios

Q: The college orchestra is planning to perform Mozart's *Requiem*. Can I photocopy the sheet music and distribute it to the performers?

A: We must distinguish between the original work, which in this case is in the public domain, and the sheet music of that original work, which may be protected by copyright. If the sheet music is protected, its distribution in photocopies is not justified by the Act. You need to get permission from the copyright holder if you do not wish to buy the needed copies. Alternatively, you could look for another edition of the sheet music that is not protected.

Fair Use analysis:

*Purpose* Moderately favorable. The use is being made at a nonprofit educational institution but the purpose is primarily entertainment.

*Nature* Unfavorable. The *Requiem* is a highly creative work.

*Amount* Unfavorable. The whole work is being copied.

*Effect* Unfavorable. The photocopying is replacing sale of the work and numerous copies are being made. A mature market exists to supply sheet music to musicians.

Q: The college orchestra is planning to perform Mozart's *Requiem*. Do I need to get copyright permission for the performance?

A: No permission is necessary as long as you comply with the copyright exemption described in this chapter.

Q: The college orchestra is planning to perform Mozart's *Requiem*. May I make a recording of the performance? If so, how may the recording be used afterward?

A: We consider that Fair Use covers the recording of a performance for the purpose of teaching or personal study. For example, the faculty and students who are performing in the concert may wish to have a recording of it in order to evaluate and improve their musical skill. To strengthen the Fair Use determination, make only the minimum number of copies needed to fulfill this purpose and do not sell or give copies to others. Do not make the recording publicly available on the Web.

If you wish to sell the recording, or make it publicly available, you should get the copyright owner's permission. See chapter 9 of this guide, "How to Get Copyright Permission to Use a Work."

Fair Use analysis for teaching or personal study:

<i>Purpose</i>	Favorable. The recording is being made at a nonprofit educational institution and will be used for teaching, criticism, etc.
<i>Nature</i>	Unfavorable. The <i>Requiem</i> is a highly creative work.
<i>Amount</i>	Unfavorable. The whole work is being copied.
<i>Effect</i>	Favorable. The recording will not replace sale of the work or impair the market or potential market for the work. The value of the recording does not lie in the particular work being performed, but in the fact that the faculty and students are the performers—they will use the recording to evaluate their performance. The recording is not being publicly distributed.

Q: I want to show a movie on campus. Do I need to get copyright permission?

A: If you wish to show a movie in a public setting, that is, to a group larger than your own circle of friends, and the primary purpose in showing the movie is entertainment, you must get permission from the copyright holder unless you already have public performance rights for the movie. For guidance on public performance rights, see chapter 9 of this guide, "How to Get Copyright Permission to Use a Work."

If the primary purpose of the showing is educational, that is, part of a class session or similar instructional activity, you do not need permission.

Fair Use analysis for public showings:

<i>Purpose</i>	Unfavorable or unfavorable, depending upon whether the showing is primarily entertainment or education.
<i>Nature</i>	Unfavorable. The film is a highly creative work.
<i>Amount</i>	Unfavorable. The whole work is being shown.
<i>Effect</i>	Unfavorable. Showing the film could replace sale of the work (e.g., movie tickets or rentals from video stores). You are showing the film in a public setting.

Q: Arena Theatre is planning to perform Dorothy L. Sayers's play, *The Zeal of Thy House*. Do we need to get copyright permission?

A: The college considers that performances by Arena Theatre are performed primarily for entertainment. Thus public performance rights must generally be obtained.

## 20. Conservatory E-Portfolios

This chapter describes how Conservatory students may use works in their e-portfolios, which they make publicly available on the Web.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

Note: Determining the copyright status of music may be complicated by the fact that the music itself as well as the audio recording, sheet music, score, libretto, etc., are each considered a “work” and may be copyrighted separately.

### Sample Scenarios

Q: I am a Conservatory student and want to post in my e-portfolio an audio or video file of myself performing a copyrighted piece of music. Is that OK?

A: We consider this an instance of Fair Use if you post only a portion of the complete work and provide the file as a stream rather than a download.

Fair Use analysis:

*Purpose* Moderately favorable. The use is being made at a nonprofit educational institution and the purpose is primarily educational.

*Nature* Unfavorable. The music is a highly creative work.

*Amount* Favorable. Only a portion of the work is being used, and the amount is appropriate to the educational purpose.

*Effect* Moderately favorable. You are providing this work in a publicly accessible forum, but it will not significantly impair the market or potential market for the work (e.g., sales of CDs or downloads, or subscriptions to streaming services) because you are supplying only a portion of the complete work.

Q: Given the judgment in the above scenario, is one movement from a larger work considered a “complete work”?

A: We consider that it is probably a “complete work”—thus you should post only part of the movement in your e-portfolio.

## 21. Course Packs (Sold in Bookstore)

This chapter applies to copyrighted works, or parts or works, that are photocopied and sold to students at the Bookstore.

For assistance, please contact Copy Center (Bookstore) staff, x5111, [copy.center@wheaton.edu](mailto:copy.center@wheaton.edu).

Note: The application of Fair Use to the provision of course readings is a highly contested area of copyright law. The following policy is based upon an extensive lay review of existing case law, opinions published by lawyers, and the official positions of such parties as the Association of American Universities, Association of Research Libraries, Association of American University Presses, and Association of American Publishers. Some aspects of our policy, such as the status of book chapters, and the five-article limit, are not given in the text of the law, but represent what we believe is a moderate yet assertive understanding of the spirit of the law.

1. The Bookstore will duplicate book chapters, journal articles, and other documents for inclusion in course packs.
2. The Bookstore will get copyright permissions where necessary. Any permission fees will be passed on to the buyer of the course pack.
  - Copyright permission is required for book chapters (or parts of books) that amount to about 20% or more of the whole book. Apply this rule to single-author books and to edited volumes.
  - Copyright permission is required for each journal article when the number of articles for the course exceeds 5.
3. Please do not post materials to your Blackboard course that are included in a course pack, as this will result in higher fees for your students.
4. Course packs are not intended to substitute for the purchase of books or other materials readily available on the market at a fair price. In particular, no copies of works considered “consumable,” such as workbooks and test booklets, may be included in course packs.
5. Each work or part of a work that is included in the course pack must include a notice of copyright, or in the absence of a notice, a warning that the material may be protected by copyright. Please see chapter 13 of this guide, “Copyright Notices and Warnings.”
6. Each course pack will be sold “at cost,” i.e., for the cost of production and any permission fees.



## 22. Non-Curricular—File Sharing or Copying CDs / DVDs / Documents / Other Media

This chapter describes how faculty, staff, and students may copy or reformat works for non-curricular purposes.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

### Sample Scenarios

Q: I own some videotapes and would like to transfer them to DVD. Is that OK?

A: Yes. Fair Use is generally understood to include the right to reformat material you own. This is especially true if the DVD version is not available on the market.

Q: I borrowed a CD from the library. May I make a copy of it for myself?

A: Only if you get the copyright owner’s permission.

Q: I’m creating a PowerPoint presentation for an upcoming meeting on campus. Can I include an image I found on the Web?

A: Probably, but it would be better to use an image that provides explicit permission for such uses.

Fair Use analysis:

*Purpose* Moderately favorable. Your use is for an activity of a nonprofit educational institution, but not for the purpose of teaching or scholarship.

*Nature* Moderately unfavorable. The image is creative rather than factual.

*Amount* Unfavorable. You want to use the whole work.

*Effect* Favorable. You are making only one copy, and there is no significant effect on the market or potential market for the image. You are making the image available only for a limited time.

## 23. Non-Curricular—Personal Web Pages

This chapter describes how faculty, staff, and students may use works on non-curricular Web pages.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

### Sample Scenarios

Q: Can I include on my Web site a text or image created by someone else?

A: Probably not, unless you have the copyright owner’s permission.

Fair Use analysis:

<i>Purpose</i>	Moderately unfavorable. Your use is entertainment or general interest. If you are profiting from the site, your use is commercial (less favorable).
<i>Nature</i>	Favorable or unfavorable. The work in question is factual (more favorable) or creative (less favorable).
<i>Amount</i>	Favorable or unfavorable. You are using a portion of the work (more favorable) or the whole work (less favorable).
<i>Effect</i>	Unfavorable. You are making the work publicly accessible. This could replace sale of the work or significantly impair the market or potential market for the work.

## 24. Non-Curricular—Posters / Signs

This chapter describes how faculty, staff, and students may use works on posters or signs to be displayed publicly.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

### Sample Scenarios

Q: Can I include on my poster an image I found on the Web?

A: Probably, but it would be better to use an image that provides explicit permission for such uses.

Fair Use analysis:

*Purpose* Favorable or unfavorable. Your use is educational (more favorable) or entertainment or general interest (less favorable). If you are advertising a commercial service, your use is less favorable.

*Nature* Favorable or unfavorable. The image has low artistic value (more favorable) or high artistic value / creativity (less favorable).

*Amount* Unfavorable. You are using the whole image.

*Effect* Moderately favorable. You are making the work publicly accessible, but only for a limited time. Your use of the image likely will not replace sale of the work or significantly impair the market or potential market for the work.

## 25. Reproductions by Libraries and Archives

In addition to the specific exemptions provided here, libraries and archives may also avail themselves of the Fair Use exemption.

Note: For the wording of notices and warnings described below, see chapter 13 of this guide, "Copyright Notices and Warnings."

Libraries and archives at Wheaton College may:

- Make up to 3 copies of an unpublished work in their collections solely for purposes of preservation and security or for deposit for research use in another library or archives. If the copy is made in digital format, it may not be made available to the public in that format outside the premises of the library or archives.
- Make up to 3 copies of a published work solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, *if*:
  - a) The library or archives has determined, after a reasonable effort, that an unused replacement cannot be obtained at a fair price *and*
  - b) A copy made in digital format is not made available to the public in that format outside the premises of the library or archives
- Make one copy for a patron or to fulfill an interlibrary loan request of no more than one article or other contribution to a copyrighted collection or periodical issue, or a small part of any other copyrighted work, *if*:
  - a) The copy becomes the property of the user and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research *and*
  - b) The library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright
- Make one copy for a patron or to fulfill an interlibrary loan request of an entire work or a substantial part of it, *if*:
  - a) The library or archives has determined, after a reasonable effort, that the work cannot be obtained at a fair price *and*
  - b) The copy becomes the property of the user and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research *and*
  - c) The library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.

In all cases, the library or archives:

- May not charge more than what is necessary to cover the cost of making the copy.
- Must include a notice of copyright on the copy made, or in the absence of a notice, a warning that the material may be protected by copyright.
- Will not be held liable, nor will an employee of the library or archives be held liable, for copyright infringement resulting from unsupervised copying by patrons, provided that copying equipment displays a notice that the making of a copy may be subject to copyright law.
- May not engage in systematic or concerted copying or distribution of copies.

*Summary of §108, Copyright Act*

## 26. Reproductions for Persons with Disabilities

This chapter describes how you may reproduce or reformat works for use by persons with disabilities.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

It is not an infringement of copyright “for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities, *provided that*

- Such copies include a notice that any further reproduction or distribution in a format other than a specialized format is an infringement *and*
- Such copies include a copyright notice identifying the copyright owner and the date of the original publication.”

§121, *Copyright Act*

## 27. WETN Radio / TV

The College enters into license agreements with various agencies to enable WETN to broadcast copyrighted material via radio, TV, and internet. For more information, please consult the WETN manager.