

© Comprehensive
© Copyright
Policy





Comprehensive Copyright Policy

COPYRIGHT BASICS

What Does Copyright Protect?

Original works of authorship fixed in a tangible medium of expression.

When Does it Begin and End?

Today, it begins at the moment of fixation in a tangible medium of expression and ends at the expiration of 70 years after the death of the author. Different rules apply to older works, however, and there are special rules for works-for-hire.

What Does it Mean to Owners?

Owners have exclusive rights to make copies, create derivative works, distribute, display and perform works publicly.

What Does it Mean to Users?

If the law protects a work you wish to use, you must ask for permission from the copyright owner unless your planned use is covered by one of the law's exemptions, such as fair use.

HOW DOES COPYRIGHT AFFECT ME?

NWTC is bound to abide by the copyright law. All NWTC administration, faculty, and staff must abide by the copyright law, are prohibited from copying protected works, and are fully responsible for their actions. Copyright owners have sued and probably will continue to sue individuals. They will sue the College too, but that may not insulate the individual who took the allegedly infringing action from the full force of a lawsuit.

The penalties for infringement are very harsh: the court can award up to \$100,000 for each separate act of willful infringement. Willful infringement means that you knew you were infringing and you did it anyway. Ignorance of the law, though, is no excuse. If you don't know that you are infringing, you still will be liable for damages - only the amount of the award will be affected. Then there are attorneys' fees.....

If your activities violate NWTC's *Comprehensive Copyright Policy*, you will be personally responsible for your own defense. In other words, if you do not follow this Policy and any licenses that affect your rights to use others' works, the College will not defend you. **You will be on your own for the cost of legal defense and damages.** Your personal liability insurance will probably not cover these expenses.

There is one special provision of the law that allows a court to refuse to award any damages at all if it so chooses, even if the copying at issue was not a fair use. It is called the good faith fair use defense [17 USC 504(c)(2)]. It only applies if the person who copied material reasonably believed that what he or she did was a fair use - as would likely be the case if you followed this Policy! If you qualify for this defense, it makes you a very poor prospect for a lawsuit. On the other hand, if you disregard sound advice about fair use, a court would be free to award the highest level of damages available. This would make you a handsome target.

There is another problem if you ignore our advice about fair use: The Wisconsin Constitution and statutes may limit our ability to defend individual employees and students, but to the extent we can, Northeast Wisconsin Technical College will defend you against a charge that your use of another's works is an infringement so long as you follow this Policy and abide by the terms of any licenses that affect your rights to use others' works. If your activities violate these conditions, you will be personally responsible for your own defense.

You might think that giving your copying to a commercial (for-profit) copyshop would relieve you of liability for infringement, but it may not: It would depend on whether your copying was fair use, and whether the copyshop pays royalties to copyright owners. You would still be liable if these two conditions were not met.

If permitted by State law and procedures, Northeast Wisconsin Technical College will defend any faculty or staff member against a civil action alleging copyright infringement:

- where the use is in accordance with the provisions of a valid license agreement,
- where the use is within the Rules of Thumb listed below,
- where the permission of the copyright owner has been obtained, or
- where the College's legal counsel has assisted in determining that the use was permissible.

Otherwise, the faculty or staff member will be personally responsible for the defense of a civil action for copyright infringement.

WHY DO WE NEED THIS NEW COPYRIGHT POLICY?

Copyright affects faculty, students and staff at Northeast Wisconsin Technical College in ways that we could not even imagine a few years ago. If not for advances in electronic communications, and in particular, our love affair with the World Wide Web, we may have been able to get by with nothing more than our previous, basic statement about fair use. Today that approach is not enough.

HOW CAN I TELL IF SOMETHING IS COPYRIGHTED?

Only copyrighted materials are subject to the restrictions in this Policy Statement. Uncopyrighted materials may be copied freely and without restriction.

Because a copyright notice is not required for copyright protection of works published on or after March 1, 1989, most works (except those authored by the United States Government) should be presumed to be copyright protected, unless further information from the copyright holder or express notice reveals that the copyright holder intends the work to be in the public domain. Works published prior to March 1, 1989, generally require a copyright notice to be protected. The Copyright Office Circular 22 explains how to determine the copyright status of a work.

HOW CAN I KNOW IF I AM INFRINGING SOMEONE'S COPYRIGHT?

Answer these three questions to decide whether you need permission to use a copyrighted work.

1. Is the work protected?

Copyright does not protect, this Policy does not apply to, and anyone may freely use the following:

- Works that lack originality — logical, comprehensive compilations (like the phonebook)
- Unoriginal reprints of public domain works Works in the public domain (works published on or before December 31, 1922)
- Freeware (not shareware, but really, expressly, available free of restrictions-ware — this may be protected by law, but the author has chosen to make it available without any restrictions)
- US Government works
- Facts
- Ideas, processes, methods, and systems described in copyrighted works

The presence or absence of a copyright notice no longer carries the significance it once did because the law no longer requires a notice. Absence of a notice means virtually nothing. Even if there is no copyright notice, you must assume that the material is copyright protected.

2. If the work is protected, do you wish to exercise one of the owner's exclusive rights?

- Make a copy (reproduce)
- Use a work as the basis for a new work (create a derivative work)

- Electronically distribute or publish copies (distribute a work)
- Publicly perform music, prose, poetry, a drama, or play a video or audio tape or a CD-ROM, etc. (publicly perform a work)
- Publicly display an image on a computer screen or otherwise (publicly display a work)

3. Is your use exempt or excused from liability for infringement?

- Fair use
- Library's special rights
- Educational performances and displays

If an exemption does not excuse infringement and eliminate the need to ask permission or pay fees to exercise the owner's rights, you need permission.

WHAT IS FAIR USE?

The copyright law is designed to protect the rights of the author. It is also designed to enable educators and students to have access to, and to reproduce copyrighted materials. The key to this authorized educational use is found in the concept of fair use. Section 107 of the copyright law states that:

. . .the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section (Sec. 107) for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.

So, what is fair use? We would all appreciate a clear, crisp answer to that one, but far from

clear and crisp, fair use is better described as a shadowy territory whose boundaries are disputed, more so now that it includes cyberspace than ever before. In a way, it's like a no-man's land. Enter at your own risk.

FAIR USE GUIDELINES

Wouldn't some guidelines help? The following are standard guidelines used throughout the country for determining if you are making fair use of someone else's work:

I. Single Copying for Teachers:

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- a chapter from a book;
- an article from a periodical or newspaper;
- a short story, short essay or short poem, whether or not from a collective work;
- a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. Multiple Copies for Classroom Use:

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion provided that:

- The copying meets the test of *brevity* as shown in the chart below, and tests of *spontaneity* and *cumulative effect* as defined below; and,
- Each copy includes a notice of copyright. (Minimum requirement is the inclusion of the copyright notice

which appears on the title page of the work or its reverse side, and the page number. A full bibliography style reference is desirable.)

Definition of Brevity

1. **Poetry**—a complete poem if less than 250 words and if printed on not more than two pages or, from a longer poem, an excerpt of not more than 250 words.
2. **Prose**—either a complete article, story or essay of less than 2,500 words, or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

(These limits may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph).

3. **Illustration**—one chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
4. **“Special” works**—certain works in poetry, prose or in “poetic prose” which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Notwithstanding the above limits, such “special works” may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.

FAIR USE GUIDELINES CHART

<i>Material</i>	<i>Instructor's Copy</i>	<i>Multiple Copies</i>	<i>Cumulative Use Per Class Per Semester</i>
Fiction, Nonfiction Textbooks, Theses	1 chapter	1,000-word excerpt or 10%	2
Stories, Essays, Anthologies, Encyclopedias	1 story or essay	2,500-word excerpt or story	2-3
Poetry	1 article	250-word excerpt or poem	2
Periodicals	1 article	2,500-word excerpt or essay	3
Cartoons, Charts, Pictures	1 per book	Same as above	2-3
Lectures, Sermons Speeches	1 per book or issue	Same as above	2-3
Computer Software and Documentation	1 archival copy	Small excerpts only of documentation	?

Remember, fair use is not just for photocopies. It also applies to:

- Making any kind of copies of copyrighted works (for example, videocassette copies)
- Making derivative works (for example, digitizing slides)
- Distributing works, including electronic distribution
- Displaying and performing works publicly

Some additional portion limits to keep in mind to meet the test of brevity:

- Motion media - up to 10% or 3 minutes, whichever is less
- Music - up to 10% or 30 seconds, whichever is less

- Photos and images - up to 5 works from one author; up to 10% or 15 works, whichever is less, from a collection
- Database information - up to 10% or 2500 fields or cell entries, whichever is less

Definition of Spontaneity

1. The copying is at the instance and inspiration of the individual teacher, and
2. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be **unreasonable to expect a timely reply** to a request for permission.

Definition of Cumulative Effect

1. The copying of the material is for only one course in the school in which the copies are made.
2. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
3. There shall not be more than **nine** instances of such multiple copying for one course during one class term.

The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

Prohibitions to above (Important rules that all faculty and staff must know)

1. Notwithstanding any of the above exemptions, the following shall be prohibited:

2. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts are accumulated or reproduced and used separately.

There shall be no copying in or from works intended to be “consumable” in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

3. Copying shall not:
 - substitute for the purchase of books, publishers’ reprints or periodicals;
 - be directed by higher authority;
 - **be repeated with respect to the same item by the same teacher from term to term.**
4. No charge shall be made to the student beyond the actual cost of the photocopying.

NOTE: The guidelines outlined here are not law, and they are not the text of the law itself. However, legal opinion states that the courts are likely to give credence to them because of the nature of the 1976 parties represented in stating minimum standards.

FAIR USE RULES OF THUMB

If the guidelines are not helping you with your specific situation, try to stay within these Rules of Thumb. Interpret them conservatively.

Rules of Thumb for Research Copies

1. Limit research copies to
 - single chapters
 - single articles from a journal issue
 - several charts, graphs, illustrations
 - other similarly small parts of a work.

Rules of Thumb for Coursepacks

1. Limit coursepack materials to
 - single chapters
 - single articles from a journal issue
 - several charts, graphs or illustrations
 - other similarly small parts of a work.
2. Include
 - any copyright notice on the original
 - appropriate citations and attributions to the source.
3. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

Rules of Thumb for Using Audio-Visual Materials for Educational Purposes

Educational institutions and governmental agencies are authorized to publicly display and perform others' works in the course of face-to-face teaching activities, and to a limited degree, in broadcasts. These rights are described in Sections 110 (1) and (2), respectively, of the copyright law. However, there are some limitations:

1. Audio-visual materials must
 - Be shown as part of systematic instructional activities

- Be directly related to teaching (and not used as a recreational or diversionary endeavor)
 - Be shown in a classroom or similar place used as a classroom
 - Be shown without any purpose of direct or indirect commercial advantage
2. Television programs (except news programs) taped off the air can only be used for viewing in class if they
 - are used within 10 school days of being recorded
 - include the copyright notice as recorded
 - are only shown again once when instructional reinforcement is necessary
 - are erased within 45 days after the date of recording
 - meet the other criteria listed above for using audio-visual materials

Rules of Thumb for Digitizing and Using Images for Educational Purposes

1. Is the image you wish to digitize readily available online or for sale or license at a fair price?

If YES: Point to, purchase or license the image. Do not digitize it unless you are in the process of negotiating a license. If you have a "contract pending," digitize and use the image in accordance with these Rules of Thumb until the license is finalized and you have received the licensed digital image.

If NO: Digitize and use the image in accordance with the following limitations:

- Limit access to all images except "thumbnails" to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.

- Students may download, transmit and print out images for personal study and for use in the preparation of academic course assignments and other requirements for degrees, may publicly display images in works prepared for course assignments etc., and may keep works containing images in their portfolios.

2. Periodically review digital availability. If a previously unavailable image becomes available online or for sale or license at a fair price, point to or acquire it.

Rules of Thumb for Digitizing and Using Others' Works in Multimedia Materials for Educational Purposes

Please keep in mind that the rights described here are rights to create unique works, but not to make multiple copies and give them out (distribute them).

1. Students, faculty and staff may incorporate others' works into a multimedia work or display and perform a multimedia work in connection with or creation of
 - class assignments
 - curriculum materials
 - remote instruction
 - examinations
 - student portfolios
 - professional symposia.
2. Be conservative. Use only small amounts of other's works.
3. Don't make any unnecessary copies of the multimedia work.

Rules of Thumb for Displaying and Performing Other's Works in Distance Learning

These Rules of Thumb are different from the others. For the most part, Rules of Thumb address making and distributing copies. Distance Learning raises these concerns too, but "public performance" is the focus of these Rules of Thumb. Section 110 of the copyright law authorizes educational performances and displays of entire works (like poems, plays, musical works and movies), but it significantly distinguishes between what can be performed in the classroom and what can be transmitted. This results in a "gap" in legal authority to perform certain works for distance learners.

The CONFU Educational Fair Use Guidelines for Distance Learning apply fair use to fill this gap. But the Distance Learning Guidelines only tackle fair use to perform and display others' works in two contexts:

- Live interactive distance learning classes
- Delayed transmission of faculty instruction.

They do not cover fair use of (performance of) others' works in online course materials.

Check Sections 110(1) and (2) of copyright law before proceeding since they authorize considerable performance activity without any need to refer to these Rules of Thumb or the Guidelines. Also check any licenses acquired with materials purchased specifically for distance learning; they should include all the rights you will need to utilize them for that purpose, with no need to refer to these Rules of Thumb or the Guidelines. If they don't, and you need to rely on these

Rules of Thumb in any distance learning context, remember: small parts, limited times and limited access are the keys to fair use.

1. Incorporate performances of others' works
 - sparingly
 - only if a faculty member or the institution possesses a legal copy of the work.
2. Include
 - any copyright notice on the original
 - appropriate citations and attributions to the source
 - a Section 108(f)(1) notice.
3. Limit access to students enrolled in the class and administrative staff as needed. Terminate access at the end of the class term.
4. Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

USING THE FOUR FACTOR FAIR USE TEST

If you need to make a more extensive use of another's work than suggested by the appropriate Rule of Thumb, or if there isn't an appropriate Rule of Thumb, use the four factor fair use test to determine whether the use is fair or requires permission.

Here's how it works: With a particular use in mind,

- Read each question and the comments about it
- Answer each question about your use
- See how the balance tips with each answer

- Make a judgment about the final balance: overall does the balance tip in favor of fair use or in favor of getting permission?

FACTOR 1: What is the character of the use?

- Nonprofit
- Educational
- Personal
- Criticism
- Commentary
- Newsreporting
- Parody
- Otherwise
"transformative" use
- Commercial

Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner – in favor of seeking permission. The uses in the middle, if they apply, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

Imagine that you could assign a numerical weight to each use. A nonprofit educational use other than the middle uses, for example, making a copy of a journal article for a university class, might weigh 5 in favor of fair use. But a nonprofit educational use that is also criticism, for example, the inclusion by a faculty member of a quote from another's work in a scholarly critique, would weigh even more in favor of fair use: about 6 or 7. That's because the uses in the middle are "core" fair uses; the ones most dearly protected.

Even if they are for-profit, they weigh in favor of fair use: that's why they subtract from the weight against fair use of a commercial use. A commercial duplication of an article from a journal might weigh 5 against fair use. But a commercial commentary, while still weighing against fair use because it's commercial, would only weigh about 2 or 1.

FACTOR 2: What is the nature of the work to be used?

- Fact
- A mixture of fact and imaginative
- Imaginative
- Published
- Unpublished

Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance.

FACTOR 3: How much of the work will you use?

- Small amount
- More than a small amount

This factor has its own peculiarities. The general rule holds true (uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of asking for permission), but if the first factor weighed in favor of fair use, you can use more of a work than if it weighed in favor of seeking permission. A nonprofit use of a whole work will weigh somewhat against fair use. A commercial use of a whole work would weigh significantly against fair use.

For example, a nonprofit educational institution may copy an entire article from a journal for students in a class as a fair use; but a commercial copyshop would need permission for the same copying. Similarly, commercial publishers have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier portions.

FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market

This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing! It depends on what happened with the first three factors.

Here’s why: This factor poses a “circular reasoning” problem: we do the fair use analysis to find out whether we might owe the copyright owner some money for a particular use. But this fourth factor asks, “Is the owner losing money because of this use?” We don’t know that yet, do we, because until we are through, we don’t know whether he is entitled to any money that he could then lose. If we knew that he was entitled to some money and that he was therefore losing it because of our use, we would not be doing the fair use test; we would just pay the money.

Does the balance for your use tip in favor of fair use or in favor of getting permission after consideration of all four factors?

WHAT DO I DO WHEN IT IS NOT A FAIR USE?

In order to copy or otherwise use materials, including software, where (a) the materials are copyrighted, (b) use exceeds what is permitted by license or the Rules of Thumb, and (c) the four factor fair use test indicates that the use is likely not fair, permission should be obtained from the copyright owner.

WHO CAN HELP ME OBTAIN PERMISSION TO COPY?

NWTC's Vice President of Administration is the Copyright Officer for the College. The operational duties of copyright permission are the responsibility of the Printing Services Manager and the Library Services Manager. All questions concerning copyright should be directed to these individuals.

If a question exists as to whether a specific application may violate the copyright law, it is advisable to request permission to copy. Utilizing the request for permission process takes time but it does insulate the educator or student from possible legal action.

The preparation of the request for permission to use copyrighted material is the responsibility of the educator. The LRC, Green Bay Campus, will provide forms and assistance in the preparation of the request and will submit the forms to the copyright holder. Copies of the request and resulting action will be maintained on file, for record,

in the LRC with a copy to the individual and one copy to the division or appropriate subject matter coordinator.

The request must include the following information as appropriate:

- Title, Author(s), Editor(s), or Publisher;
- Edition and/or copyright;
- Exact amount of material to be used (i.e. page numbers, lines, etc.);
- Reference to the initial contact individual, by name, in the letter if the initial contact was made by phone;
- Nature of the use (i.e. how many times, when and with whom the material will be used);
- How the material will be reproduced and distributed

Contact the LRC Green Bay Campus for full details. Do not proceed with the act of copying until approval is received and on file.

CONCLUSION

The advent of the copy machine, videocassette recorder, and the Internet opened whole new vistas in education. At the same time, it opened the door to possible legal problems.

The following notice reflecting this policy should be posted at all computer and photocopying stations which may be used for reproducing copyrighted materials, e.g., departmental copy rooms and libraries, and at or near all computer stations.

“Copying, displaying and distributing copyrighted works, may infringe the owner’s copyright. Northeast Wisconsin Technical College’s policy statement on “Fair Use of Copyrighted Materials” can help you determine whether your use of a copyrighted work is a fair use or requires permission. Any use of computer or duplicating facilities by students, faculty or staff for infringing use of

copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law.”

This document does not answer all the questions; it is not intended to replace legal counsel. It is intended to alert you to potential problems you face as a professional educator if and when you copy someone else’s work, for whatever reason.

Further information may be obtained through books and periodicals on file in the LRC, Green Bay Campus, such as:

Talab, R.S. Commonsense Copyright: A Guide for educators and Librarians. 2nd ed. Jefferson, NC: McFarland & Company, 1999.

The majority of this policy was taken with permission from Georgia Harper’s excellent “Copyright Crash Course” located on the University of Texas’s web site at <http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>. This resource is recommended for anyone who wishes to learn more about copyright.

**Prepared by the NWTC Copyright Committee
August 2002**

Committee Members:

Jay Foley
Kim LaPlante
Chuck Petersen
Beth Pless
Linda Jeske
Marcine Becks



Northeast Wisconsin Technical College is committed to equal opportunity for all and does not discriminate in admission or access to, or treatment or employment in, its programs and activities on the basis of race, color, creed, national origin, sex, age, or handicap.

385GRA 8/02