



POLICY

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| TITLE: | COPYRIGHT POLICY | |
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| Responsible Department: | Academic Affairs | |
| Policy Owner: Title: E-Mail: Telephone Extension: | Dr. Ben Cohen Executive Vice President of Academic Affairs bcohen@westernu.edu 5562 | |
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| Relevant Legislation, Regulation, and Accreditation: | Copyright Act of 1976, TEACH Act of 2002 | |
| Related Policies, Procedures, Forms, and Documents: | Form No.: | Form Name: |
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Policy Statement

It is the policy of Western University that all students, faculty, and staff shall comply with, and have access to a copy of, both the [U.S. Copyright Act of 1976](#) and the [TEACH Act](#) .

Purpose of Policy

To provide information and guidance to Western University students, faculty, and staff in making informed decisions regarding appropriate use of copyrighted materials so that they will be in compliance with the U.S. Copyright Act of 1976 and the TEACH Act.

Related Policy Information

From time to time, the students, faculty and staff of Western University of Health Sciences may use photocopied materials to supplement research and teaching. In many cases, photocopying can facilitate the University’s mission; that is, the education of health professionals to practice and teach with excellence and compassion. The University desires to encourage the appropriate use of such material within the context of the United States Copyright Law, (Title 17, United States Code).

The Copyright Act defines the rights of a copyright holder and how they may be enforced against an infringer. Included within the Copyright Act is the “fair use” doctrine, which allows, under certain conditions, the copying

of copyrighted material for educational or research purposes without the permission of the copyright owner. These laws and guidelines apply whether the teaching takes place in a face-to-face format or online format.

To provide guidance to University employees and students, the following guidelines are to be used to determine whether copying is within the "fair use" doctrine. If the copying is not within the guidelines, permission should be obtained from the copyright owner before any copies are made.

I. UNRESTRICTED PHOTOCOPYING

Anyone may reproduce without restriction works that have entered the public domain.

A. Uncopyrighted Unpublished Works

The copyright term for unpublished works is the life of the author plus 70 years. Anything created after 1977 but before 2003, carries a term of 120 years from the date of creation.

B. Uncopyrighted Published Works

Copies of works protected by copyright do not have to bear a copyright notice. Copyright notice requirements have been relaxed since 1978, so that the absence of notice on copies of a work published after January 1, 1978 does not necessarily mean the work is in the public domain. Works published before 1923 are in the public domain.

C. Published Works with Expired Copyrights

Anyone may reproduce without constraint published works whose copyrights have expired. All U.S. copyrights dated earlier than 75 years ago have expired. Copyrights dated later than that may also have expired because the initial period of copyright protection prior to 1978 is for 28 years if there is no renewal. The work probably will not contain notice of the renewal. We recommend that you assume the protection either is still in effect for copyrights more recent than 75 years old, or ask the owners of them (or the U.S. Copyright Office) whether they are still subject to copyright protection. Usually publishers either are the owners or know the owners' locations. If not, owners may be located through the U.S. Copyright Office in Washington, DC.

D. U.S. Government Publications

U.S. Government publications are documents prepared by an officer or employee of the U.S. Government as part of that person's official duties. Government publications include the opinions of courts in legal cases, Congressional reports on proposed bills, testimony offered at Congressional hearings, and reports of government employees. Works prepared by outside authors on contract to the Government may or may not be protected by copyright. As with other publications, copyright notices may be in the front (for pre-1978 publications) or on the front and back (in works published since January 1, 1978). In the absence of copyright notice in such works, it would be reasonable to assume they are in the public domain.

II. PERMISSIBLE PHOTOCOPYING OF COPYRIGHTED WORKS

The Copyright Act allows anyone to photocopy copyrighted works without securing permission from the copyright owner when the photocopying amounts to a "fair use" of the material, (17 U.S.C. 5107). The guidelines in this policy discuss the boundaries for fair use of photocopied material used in research or the classroom or in a library reserve operation. Fair use cannot always be expressed in numbers—either the number of pages copied or the number of copies distributed.

Teachers may reproduce copyrighted works for classroom use and for research without securing permission and without paying royalties when the circumstances amount to what the law calls "fair use." The same laws and guidelines apply to students that apply to faculty. Any serious questions concerning whether a particular photocopying constitutes fair use should be directed to Western University's attorney.

A. "Fair Use" - Current Law

In determining whether the use is a "fair use", the law requires consideration of the following factors:

17 U.S.C. SS107. Limitations on exclusive rights: Fair use notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- 1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purpose;*
- 2. the nature of the copyrighted work;*
- 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
- 4. the effect of the use upon the potential market for or value of the copyrighted work.*

At the very least, instructors may make a single copy of any of the following for scholarly research or use in teaching or preparing to teach a class:

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

Most single-copy photocopying for your personal use in research—even when it involves a substantial portion of a work—may constitute fair use.

Classroom Uses

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:

- (a) the distribution of the same photocopied material does not occur every semester;
- (b) only one copy is distributed for each student, which must become the student's property;
- (c) each copy includes a notice of copyright on the first page of the portion of material photocopied; and
- (d) the students are not assessed any fee beyond actual cost of the photocopying.
- (e) There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets, answer sheets, and like consumable materials.

The photocopying practices of an instructor should not have a significant detrimental impact on the market for the copyrighted work, (17 U.S.C. SS107 (4)). To guard against this effect, you usually should restrict use of an item of photocopied material to one course and you should not repeatedly photocopy excerpts from one periodical or author without the permission of the copyright owner.

The copying must meet the tests of brevity, spontaneity, and cumulative effect as defined below:

1. Brevity
 - (a) Poetry: a complete poem if less than 250 words or, from a longer poem, an excerpt of not more than 250 words.

- (b) Prose: either a complete article, story or essay of less than 2500 words or an excerpt of not more than 2500 words from any prose work.
 - (c) Illustration: one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue. In some cases, such illustrations are copyrighted individually and cannot be reproduced under fair use.
2. Spontaneity
- (a) 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.
3. Cumulative Effect
- (a) The copying of the material is for only one course per class term of the instructor for whom the copies are made.
 - (b) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, or more than three from the same collective work or periodical volume during one class term.
 - (c) There shall not be more than nine instances of such multiple copying for one course during one class term.

The limitations stated in (1) and (2) above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.

Library Reserve or E-Reserve Uses

At the request of a faculty member, a librarian may photocopy and place on reserve excerpts from copyrighted works in its collection, in accordance with guidelines similar to those governing formal classroom distribution for face-to-face teaching discussed above. In general, librarians may photocopy materials for reserve use for the convenience of students both in preparing class assignments and in pursuing informal educational activities which higher education requires, such as advanced independent study and research.

If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, or an entire chapter from a book. Requests for multiple copies on reserve should meet the following guidelines:

- 1. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level, 17 U.S.C. SS107(1) and (3);
- 2. The number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material, 17 U.S.C. SS107(1) and (3);
- 3. The material should contain a notice of copyright, see 17 U.S.C. SS401;
- 4. The effect of photocopying the material should not be detrimental to the market for the work. (In general, the library should own at least one copy of the work.) 17 U.S.C. SS107(4).

D. Uses of Photocopied Material Requiring Permission

- 1. Repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright, 17 U.S.C. SS107(3).
- 2. Copying for profit: Faculty should not charge students more than the actual cost of photocopying the material, 17 U.S.C. SS107(1).

Copyright for Distance Education (TEACH Act, SS110(2))

The “Technology, Education and Copyright Harmonization Act,” known as the TEACH Act, focuses on the ability of institutions to use copyright-protected materials in distance education. It authorizes instructors to digitize works for use in distance education as long as they are not already available in a digital format. This law also permits educators to show other’s works utilizing digital technology in distance education, however, there are procedures that must be in place.

1. Three types of transmissions:
 - a. Transmitting of performances of all of a non-dramatic literary or musical work.
 - b. Transmitting reasonable and limited portions of other performances (films and videos of any type).
 - c. Transmitting displays of any work in amounts comparable to face-to-face displays (includes still images of all kinds).
2. Works explicitly excluded:
 - a. Those works marketed “primarily for performance or display as part of mediated instructional activities transmitted via digital networks.”
 - b. Those works that were not lawfully made or acquired; or textbooks, coursepacks, and other materials typically purchased by a student.
3. Conditions:
 - a. The performance or display must be part of a mediated instructional activity;
 - b. Made by, at the direction of, or under the supervision of the instructor;
 - c. Directly related to the course content;
 - d. And it must be for, and technologically limited to, the students enrolled in the course.
 - e. The institution must have policies, provide information about, and give notice that the materials used may be protected by copyright.
 - f. The institution must apply technological measures that reasonably prevent those enrolled in the course from retaining works beyond the class session and redistributing them.
 - g. The institution must not interfere with technological measures taken to regulate storage and distribution.

III. INFRINGEMENT

Owners of copyrights can attempt to halt infringement by suing for injunctions, impounding or destruction of infringing articles, and can seek costs of suit and attorneys' fees. Additionally, they can seek to recoup actual money damages suffered by the copyright owner as well as the infringer's profits. When there are only nominal monetary losses, owners can, instead of seeking their actual damages, claim "statutory" damages up to \$10,000 (or up to \$50,000 if the infringement was "willful").

Definitions

Copyright - is a constitutionally conceived property right, which is designed to promote the progress of science and dissemination of original works of authorship by securing for an author the benefits or his or her original work of authorship for a limited time. These rights include exclusive rights of reproduction, preparation of derivative works, distribution, and performance. As a general rule, for works created after January 1, 1978, copyright protection lasts for the life of the author plus an additional 70 years.

Fair Use - is a limited exception to the exclusive use of the copyright owner, which if exceeded, can subject the one making unauthorized copies and the University to severe penalties.

Work - Any copyrighted expression, including literary work (fiction, non-fiction, textbooks, journal articles, written lectures, and other scholarly works); musical work including any accompanying words; dramatic work, including any accompanying music; pantomimes and choreographic work; pictorial, graphic, and sculptural work; motion pictures and other audiovisual work; sound recordings; and computer software.