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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 and in the use of published and other copyrighted materials.

Knowing the law and applying it in good faith enable 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 <https://www.copyright.gov/title17/>.

This guide provides a general overview of complex legal matters. For help in specific circumstances, please consult one of the contacts named below, who will seek legal advice as necessary.

General queries:

Steve Oberg, Buswell Library, x5852, steve.oberg@wheaton.edu

Schoology (course management software):

Academic and Institutional Technology (AIT) Service Desk, x4357,
ait.service.desk@wheaton.edu

Digital Millennium Copyright Agent for Wheaton College:

Steve Oberg, Buswell Library, x5852, steve.oberg@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’Connor²

“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 1988³

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.

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

³ Ibid.

Length of copyright

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 website some material (text, image, etc.) that you copied from elsewhere on the internet, even if your posting clearly states the source of that material.

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.”⁴ 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 website 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, websites, and software programs)
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Locally held archival materials
- 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.

⁴ 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. Due to certain legal principles, College administrators are advised to consider the question of copyright when using the services of independent contractors.

For further information on the application of this doctrine to scholarly works created by faculty (such as books, articles, musical compositions, and art, as well as course notes, lectures, and exams), please see the Faculty Handbook.

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.
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 Schoology, for example, check the copyright page of the journal issue/volume, or the publisher’s website, 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/index.php> 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 <https://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

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

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.”⁵ The more clearly each factor favors your intended use, the more confident you may be that the use is fair.

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

⁵ 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.

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.

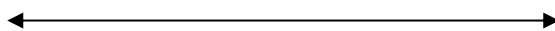
8. Checklist for Fair Use

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. An online tool called the Fair Use Evaluator provides an easy-to-use, online version of this checklist. Go to <https://librarycopyright.net/resources/fairuse/index.php>.

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 internet or 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 Steve Oberg, x5852, steve.oberg@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 <https://www.copyright.gov/>. Stanford University Library also makes available a database of copyright-renewal records at <https://exhibits.stanford.edu/copyrightr renewals>.
3. If the copyright holder can be identified, look for instructions on the holder’s website. 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 at <https://www.copyright.com> or:

Music:

American Society of Composers, Authors and Publishers (ASCAP)

<https://www.ascap.com/music-users>

Broadcast Music, Inc.

<https://www.bmi.com/licensing>

SESAC

<https://www.sesac.com/#!/>

Films:

Motion Picture Licensing Corporation

<https://www.mplc.org>

Plays:

Dramatists Play Service, Inc.

<https://www.dramatists.com/text/rights.asp>

Samuel French

<https://www.samuelfrench.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

IMPORTANT: If you are seeking permission to use a work in a course pack: 1.) be sure to specify this intended use to the copyright owner/rightsholder in your letter, and inform them that the course pack will be sold via the Wheaton College Campus Store; and 2.) request that they give you a timeframe of how long this permission is granted (e.g. in perpetuity, x number of years, specific dates).

[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 _____

11. 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 law?

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 Steve Oberg, x5852, steve.oberg@wheaton.edu.

For copyright compliance in the online environment, a specific process for communicating a claim of copyright violation (sometimes known as a "takedown notice") must be followed by the copyright holder according to the Digital Millennium Copyright Act (DMCA). In order to be legally effective, the copyright holder must communicate in writing to the college's designated agent and the communication must include additional detail described at <https://www.copyright.gov/dmca-directory/> (see section labelled "Notifications of Claimed Infringement"). The college's designated DMCA agent is Steve Oberg (x5852, steve.oberg@wheaton.edu).

In either situation, 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 internet 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 <https://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 <https://creativecommons.org/choose/>.

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.⁶

Notice for copies made for purposes of Schoology, 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 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.⁷

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 website.

⁶ Code of Regulations, Title 7, §201.14.

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

14. Schoology (course management software)

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

For assistance with Schoology functionality, please contact the AIT Service Desk, x4357, ait.service.desk@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 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. Best practice is to create a link in your Schoology course to a copy of the work available through the library's online resources or elsewhere on the internet. In such cases, no copyright consideration comes into play.

For help with creating links, see the library's [Creating Persistent Links](#) webpage. If further help is needed, consult your subject librarian for assistance. To determine who is your subject librarian, visit <https://library.wheaton.edu/librarians> and make the appropriate selection from the Subject dropdown.

2. If linking is not possible, first review and follow the steps given in chapter 5 of this guide, "When Copyright Permission is Needed." Also consult chapter 7, "The Fair Use Exemption," as well as chapter 8, "Checklist for Fair Use" as needed in order to conduct a Fair Use analysis. The Fair Use Evaluator at <https://librarycopyright.net/resources/fairuse/index.php> is a helpful tool for this purpose.

There is one modification to the above:

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 you believe that copyright permissions are required for material that you'd otherwise upload into Schoology, consult with your subject librarian about ways the library may be able to assist with alternatives, such as putting material on reserve. Or you can work with the bookstore to provide material as a course pack, and they will obtain copyright permissions. Any associated costs for obtaining those permissions will be passed on to the buyer in the price of the course pack.

4. If your decision is to post material in Schoology, that material:

- 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.” (For example, textbooks, course packs, workbooks, or digital educational products (made for the purpose of performance or display for use in mediated instruction.)) In other words, where such works already exist for purchase, 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.
- Must not be provided by means of 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.
- Must provide proper attribution, i.e. a complete citation to the source of the work.

In sum:

1. Link out to material available online through the library or elsewhere on the internet whenever possible;
2. Analyze if the material is under copyright (see chapter 5);
3. Assess Fair Use (see chapters 7-8);
4. If copyright permission is needed, consult with subject librarian for alternatives, or work with the campus bookstore to create a course pack.

Sample Scenarios

Q: I have a book chapter I want to assign. Is it OK for me to post a scanned copy of it in Schoology for my students to read online and/or download?

A: Maybe. Generally, a scanned copy of a single book chapter is allowable under Fair Use. However, a Fair Use analysis may be needed depending on the specific situation.

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>	Favorable. The document has been previously published.
<i>Amount</i>	Favorable. Only limited and reasonable portions will be used, and the part that is being used (let us assume) isn't the "heart" of the work (the part considered most central to the work as a whole). This is the decisive factor in our overall determination in favor of Fair Use in this scenario, based on the college's understanding of U.S. case law.
<i>Effect</i>	Favorable. Proper attribution is given with the intended use, Schoology restricts access to only your students, and 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 book.

Q: I have created some course webpages outside of Schoology. 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 for the purpose of teaching, research, or scholarship in connection with classes offered at a nonprofit educational institution.
<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 Schoology?

A: Maybe. Always prefer short clips rather than a complete video, since short clips are generally acceptable in terms of Fair Use. If you wish to use an entire video, you would need to first request an evaluation for copyright permission by sending an email to copyright@wheaton.edu. 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. Schoology 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. If using short clips, it is considered more favorable. If the whole work is being posted, more analysis for copyright compliance needs to occur before use will be allowed.
- 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. Schoology 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*

The Chaplain’s Office manages a CCLI license for the college that covers a variety of activities relating to chapel services. More details about what the license covers are available at <https://us.ccli.com/copyright-license/>

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 song? May I project images taken from the internet 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: You should 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 copyright owner's permission first. Then be sure to exercise good practice by citing the copyright and stating that the photo is used with permission of the copyright owner.

Fair Use analysis:

<i>Purpose</i>	Favorable. The use is being made at a nonprofit educational institution and <i>Kodon</i> is not produced for financial gain. The purpose of <i>Kodon</i> is educational.
<i>Nature</i>	Unfavorable. The photo is an unpublished and highly creative work.
<i>Amount</i>	Moderately unfavorable. You want to publish the photo in its entirety, although the amount used is appropriate to the educational objective.
<i>Effect</i>	Moderately unfavorable. Numerous copies of <i>Kodon</i> 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 education, *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: Fair Use generally 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 internet.

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 favorable, 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 internet.

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: If you post only a portion of the complete work and provide the file as a stream rather than a download, the case for Fair Use would be strong.

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: 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 the inclusion of copyrighted works or parts of works into course packs created by and sold to students at the Bookstore.

For questions about the need for creating a course pack or the copyright status of a particular work, please contact Steve Oberg, x5852, steve.oberg@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.

1. The Bookstore will duplicate book chapters, journal articles, and other documents for inclusion in course packs.
2. The Bookstore will obtain copyright permission for each item included in a course pack. Any permission fees will be passed on to the buyer of the course pack.
3. 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.
4. 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.”

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 internet?

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 Webpages

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

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

Sample Scenarios

Q: Can I include on my website 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 internet?

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:

- Copy 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 three 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
- 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 prominently displays a copyright warning at the place where orders are accepted, and includes the copyright warning on its order form
- 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 prominently displays a copyright warning at the place where orders are accepted, and includes the copyright warning on its order form

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*