

**WESTMONT COLLEGE
COPYRIGHT POLICY AND RESOURCE GUIDE**

FOREWORD

It's rarely our intention to take or use what does not belong to us without the rightful owner's consent. But that's what we do if we copy another author's work without his or her permission. Sometimes the law gives us the right to copy without securing this permission. But other times it does not. The purpose of this guide is to help our community understand how to distinguish one time from another.

The United States Copyright Act regulates when and how we may use another person's work—both when it is necessary to gain permission and when we may freely use the material without the creator's consent. Unfortunately, the Act is long, weighty and in some areas, open to a multitude of interpretations. Some of these interpretations are also common misconceptions. This guide will shed light on these misconceptions and give helpful guidelines for when and how to seek permission to use copyrighted material. The misconceptions below are common in an academic setting like ours.

COMMON COPYRIGHT MISCONCEPTIONS

1. If I provide the copies free of charge then I'm not infringing on anyone's copyright. (***No, no, a thousand times no! See page 6***)
2. Only material bearing the copyright symbol (©) is copyright protected. (***But wait, there's more! Go to page 2.***)
3. All educational use is "fair use." (***We've been woefully misled! Read pages 5-6.***)
4. All non-profit use is "fair use." (***Misled again. See pages 5-6 once more.***)
5. All material I find on the Internet is free to copy and use without permission. (***That's it, no more follow the leader! See page 13.***)
6. I may freely use material when the copyright owner does not respond to my request. (***I know, it's hard to believe, but the law protects even the non-responsive. Go to page 8.***)
7. Only the college can be held liable for infringement that arises out of my teaching duties. (***"Oh, man, not my boat!" Go to page 1.***)
8. I do not need permission for course pack material I only plan to use once. (***Would that it were true. See page 8.***)
9. If the book is out of print then it may be copied as many times as necessary. (***Is ANYTHING we've heard about this stuff true? See page 6.***)
10. If I don't have time to get permission, then I can make copies on the grounds of "spontaneity." (***There aren't enough hours in the day, but in 4-6 weeks, there are PLENTY of hours to go around. Go to page 4.***)
11. If I received permission to include material in one course pack, then I can include the same material in subsequent course packs. (***It would make our jobs easier, but alas, it is untrue. See page 8.***)

I.	INTRODUCTION.....	1
II.	WESTMONT COPYRIGHT POLICY	1
III.	WHAT “COPYRIGHT” MEANS.....	1
	<i>What kind of work does the copyright act cover?</i>	
IV.	COURSE PACKS	2
	<i>Can I make copies of copyrighted material for use in my course packs?</i>	
V.	COURSE PACKS & FAIR USE	4
	<i>What if my course pack material is not of the type or amount in the guidelines, can I still use it without obtaining permission from the copyright owner?</i>	
VI.	WHEN YOU NEED PERMISSION FOR YOUR COURSE PACK	7
	<i>I've analyzed my intended use and it just isn't fair. How do I get permission to use the material?</i>	
VII.	PUBLIC DOMAIN	7
	<i>How do I determine if a work has entered the public domain?</i>	
VIII.	RESERVE AND INTERLIBRARY LOAN SERVICES	7
	<i>How much material may I place on reserve?</i>	
IX.	MEDIA SERVICES AND AUDIOVISUAL MATERIAL	8
	<i>Does purchase of a film or video include ownership of the copyright?</i>	
X.	MEDIA SERVICES AND SOUND RECORDINGS	10
	<i>Are there guidelines for the use of sound recordings?</i>	
XI.	EDUCATIONAL MULTIMEDIA FAIR USE.....	11
	<i>Can I use copyrighted material in a multimedia work that I have created for educational purposes without obtaining the copyright owner's permission?</i>	
XII.	DIGITAL MILLENNIUM COPYRIGHT ACT/RESPONSIBLE USE POLICY FOR THE INTERNET	12
	<i>Am I free to copy whatever appears on the Internet?</i>	
XIII.	PERFORMING ARTS.....	13
	<i>Is it necessary to obtain permission for student performances of copyrighted works?</i>	

I. INTRODUCTION

In keeping with our community's commitments to academic integrity and to abiding by legal requirements, it is the intent of Westmont College that all members of the community adhere to the provisions of the United States Copyright Law (Title 17, United States Code, Sect. 101, et seq.). Full text of the law and its legislative history, plus subsequent analysis and commentary, are available upon request.

The following policy statements and guidelines constitute a manual for anyone at the College who wishes to reproduce, alter, or perform works that are protected by copyright. Since copyright protection applies to a variety of creative works—printed materials, sound recordings, video recordings, visual artworks, computer software, and others—the manual has been constructed to address issues related to particular types of media.

II. WESTMONT COPYRIGHT POLICY

It is the policy of Westmont College to communicate, abide by, and enforce the provisions of the copyright laws as they affect the College, its faculty, staff and students. Copyrighted materials, whether they are print or non-print, may not be duplicated unless such reproduction meets “fair use” standards, or unless written permission from the copyright holder has been received. This resource guide gives details about fair use and can be accessed on the Westmont Website at <https://www.westmont.edu/college-counsel/policies/copyright-policy-and-resource-guide>.

If a College employee (e.g., Media Services, Textbook Manager or a Reprographics staff member) is asked to make copies that he or she believes would violate the copyright law, then the employee will share with the person making the request why the employee believes it is inappropriate to make the copies.

The College does not sanction illegal duplication in any form. ***Members of the College community who willfully disregard the copyright law do so at their own risk and assume all liability.***

III. WHAT “COPYRIGHT” MEANS

What kind of work does the copyright act cover?

(Hint: More than just those documents bearing that copyright symbol (like this, “©”).) In short, the U.S. Copyright Act affords legal protection to most any work “fixed in a tangible medium.” Behold the possibilities! A book, a script, the score of a musical, a comic strip, you name it and it's probably protected. The symbol (“©”) serves as notice to the world that a work is protected. Call it a courtesy. However, a copyright owner's legal protection is not contingent upon the presence of the copyright symbol. It is no defense to a copyright infringement action that the work we copied, used or distributed did not bear the famous “©.” The presence of the symbol may affect the *amount* of damages we owe for our misuse, not whether or not we owe damages at all.

The following is a more detailed list of those works covered under the Act and the rights associated with copyright ownership of the works. According to Section 106 of the Copyright Act (90 Stat 2541), the law gives the copyright owner ***exclusive*** right to do and to authorize others to do the following:

1. Reproduce copies of the work.
2. Prepare derivative works based on the copyrighted work.
3. Distribute copies of the work by sale, rental, lease, or lending.
4. Publicly perform the work (if it is a literary, musical, dramatic, or choreographic work or a pantomime, motion picture or audiovisual work).
5. Publicly display the work (if it is a literary, musical, dramatic, choreographic, sculptural, graphic, or pictorial work—including the individual images of a film or a pantomime).

The copyright owner retains these rights even when the work itself belongs to someone else. However, these rights are not absolute. The copyright owner's rights are subject to the limitations of the Fair Use Doctrine found in Section 107 of the Copyright Act. Under the Fair Use Doctrine and its accompanying guidelines, one may, for certain purposes, exercise the copyright owner's rights without the permission to do so.

IV. COURSE PACKS

Can I make copies of copyrighted material for use in my course packs?

Yes. Course pack material of the following type and amounts is certain to comply with the congressionally endorsed fair use guidelines. These guidelines are instructive when deciding what material you would like to include. Sometimes, your intended use falls outside of these guidelines and a more extensive fair use analysis is necessary (See Section V "Course Packs & Fair Use").

Single Copies for Scholarly Needs or Library Reserve*

1. A chapter of a book.
2. A newspaper or periodical article.
3. A short story, short essay, or short poem.
4. A chart, diagram, drawing, graph, cartoon, or picture.

*Articles, etc. that are submitted for Reserve are considered the property of the instructor and will be returned at term-end. (See "Library Reserve Services" for further information.)

Multiple Copies for Classroom Use

Use of multiple copies for the classroom is permissible when the use meets the following tests of *1) brevity, 2) spontaneity and 3) cumulative effect*. In addition, each copy must also include prominent notice that it is copyrighted material. Remember that the above factors work in concert. That is, your classroom use of copyrighted material is permissible when all three tests are met.

1) Brevity

Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less. An excerpt of 500 words or less is allowable in all circumstances.

Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words.

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

Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.

Special Works: Certain works in poetry or prose or in “poetic prose,” which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

2) *Spontaneity*

The copying is at the instance and inspiration of the individual instructor. 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.

**Note: What spontaneity isn't.*

Spontaneity is not an excuse for us to wait until the last possible minute to copy and distribute material to one another when: (1) we are aware that the material does not fall into one of the safe harbors outlined above (2) we've analyzed its intended use and determined that it is not within the fair use guidelines and (3) we decided to use the material when there was still ample time to request permission. Permissions usually require a four to six week notice to the college textbook manager. Sometimes, longer is needed for the “hard to find” copyright owner.

and

3) *Cumulative Effect*

The copying of the material is for only one course, with no more than one copy per student in the course. 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 a term.

There should not be more than nine instances of such multiple copying for one course during a term.

Should it become necessary for you to gain permission for your course pack material, note that the permission is granted only for so long as the license grants permission. Usually, the copyright owner grants permission only for the duration of the course. In our case, that's one semester.

Photocopying Music for Educational Purposes

What Quantity Conforms to the Law?

For a Performance - Emergency copying is permitted so long as replacement copies are subsequently purchased.

Single Copies for Personal or Library Reserve Use (Academic Purposes Other Than Performance) - An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

Multiple Copies for Classroom (Non-Performance) Use - Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.

Photocopies Obtained Through Interlibrary Loan

Section 108(d) of the Copyright Law of 1976 specifies that a library may copy “no more than one article or other contribution to a copyrighted collection or periodical issue, or to . . . a small part of any other copyrighted work.” The copy must become the property of the requestor, and its use is limited to “private study, scholarship, or research.”

Interlibrary Loan activities are further restricted in the aggregate by The National Commission on New Technological Uses of Copyrighted Works (CONTU). The commission was created in 1976 to develop guidelines to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law. These guidelines cap the amount of photocopying the Inter Library Loan office can request for the College community in any calendar year. The thrust of the “Guidelines” is to quantify the maximum number of photocopied articles—five—that can be requested from the most recent five years of a periodical the library does not subscribe to. Individuals requesting copies in excess of the CONTU allowance may be asked to pay a royalty or the fee necessary to obtain such copies commercially.

V. COURSE PACKS & FAIR USE

What if my course pack material is not of the type or amounts in the guidelines above, can I still use it without having to obtain the copyright owner’s permission?

Maybe. The guidelines above are a simple way to be sure that you stay within the meaning of fair use. The Fair Use Doctrine permits use of copyrighted material for comment and criticism; scholarship and research; teaching or news reporting. However, simply naming one of these purposes does not transform an infringement into a fair use. Each use must qualify as a fair use and some analysis is required here.

In determining whether a proposed use is “fair,” it is necessary to consider the following factors [from *What Educators Should Know About Copyright*, by Virginia M. Helm; Bloomington, IN, Phi Delta Kappa Educational Foundation, 1986]:

1. The **purpose and character of the use**. This factor focuses on whether the proposed use of the work is educational, non-profit, commercial, personal or transformative in nature. (Note that where the proposed use is for purposes of generating income, i.e. commercial, the fair use analysis does not apply and one must obtain permission before using the copyrighted material.) Uses that are educational, personal, non-profit or transformative in nature tip the scale in favor of a fair use finding.
2. The **nature of the copyrighted work**. Uses that support a “fair use” finding are those which are published factual works, and in some cases, a mixture of factual and imaginative work. Purely imaginative works are less likely to support a finding of fair use. For example, photocopies made of a newspaper or newsmagazine

column are more likely to be considered a fair use than copies made of a musical score or a short story.

3. The **amount, substantiality, or portion used** in relation to the copyrighted work as a whole. This factor requires consideration of 1) the amount of the portion used in relation to the whole work and 2) the relative importance of that portion to the work. Here, we address both the quantitative and qualitative value of the proposed use. Where a portion represents the central message or critical ideas of the whole work, a fair use finding is less likely than if that portion represents less recognizable or less important concepts in the work.
4. The **effect of the use on the potential market for the copyrighted work**. This factor is slightly more complex than the previous three. Here we consider what effect the proposed use would have on the market for the protected material. An effect that would reduce the market or profit for the copyright owner is less likely to support a fair use finding, particularly where all other factors are weak or simply not supportive of fair use at all. However, there are other circumstances under which this factor will have no affect at all on a finding of fair use on all other factors. For example, where an original copyrighted work is out of print or otherwise unavailable, no ready market for permission exists or the copyright owner is unidentifiable, an effect on the market, even a substantial one, does not the make the use an infringement, when all other factors point to fair use.

Note: “Out of print” does not mean “free to copy without permission.” When your intended use includes material from an out of print source, the “fair use scale” is tipped in your favor. It does not necessarily mean that you may freely use the material. All other factors must also be analyzed.

Free Isn't Necessarily Fair

Look at the first factor—**purpose and character of the use**. This is where many of us get tripped up. No single factor is determinative by itself. However, we often interpret non-commercial, educational or non-profit uses as fair on their own without giving any consideration to the remaining factors in the fair use analysis. For instance, it is a common misconception that we do not need permission to provide free copies of copyrighted material.

It seems intuitively appropriate that we should not need permission for a use from which we will make no profit. However, our intuition betrays us here. This example taken to its extreme would allow us to provide entire copies of complete works to anyone who requested them so long as our purpose was non-commercial or educational. This unfairly deprives the rightful owner of revenue from potential sales of her work. Imagine a photocopy of your latest book being provided free of charge to every person who requested it!

Consider *every* factor when analyzing a fair use issue. The result may pleasantly surprise you, and if it doesn't, *timely* requests for permission are usually responded to in a *timely* manner.

The examples below illustrate simple but common fair uses in the academic setting. Each example is followed by the analysis used to arrive at a finding of fair use. Note that

although these examples are elementary, more complex questions of fair use involve the same analysis.

Comment and Criticism

e.g. A faculty member writes a book review for a scholarly journal and wants to quote the book at length.

Purpose & Character	Nature of Copyrighted Work	Amount	Effect on Market
Comment & Criticism	Imaginative (but use is transformative- i.e. recontextualized)	Insubstantial in relation entire book	Little to no cumulative effect on market (may in fact aid in publicizing the book)

Scholarship and Research

e.g. A student copies a chapter from a textbook. He uses the information to write a research paper.

Purpose & Character	Nature of Copyrighted Work	Amount	Effect on Market
Educational	Factual; unimaginative	Insubstantial in relation to the entire book	Possible small cumulative effect on market, however first three factors tip strongly in favor of fair use and small possible effect on market does not change fair use finding

Teaching

e.g. A professor copies an article from a newsmagazine which illustrates a point she plans to make in a lecture. She copies the article and distributes it to the students in her class.

Purpose & Character	Nature of Copyrighted Work	Amount	Effect on Market
Educational	Factual	Entire article	If the article is for “one time use” only the effect on the market is small; (note guidelines for classroom photocopying) educational purpose and factual nature of work lean heavily in favor of fair use

News reporting

e.g. The editor of the college newspaper summarizes a recent article appearing in the local newspaper and prints the summary in the staff newsletter.

Purpose & Character	Nature of Copyrighted Work	Amount	Effect on Market
Non-profit; educational	Factual	Summary of the article insubstantial and transformative in nature when compared to the whole work	Little to no effect on market; market for work decreases as news becomes “stale”

VI. WHEN YOU NEED PERMISSION FOR YOUR COURSE PACK

I've analyzed my intended use and it just isn't fair use. How do I get permission?

Although the fair use exception and the classroom guidelines outlined above are instructive, there are those cases where permission is required for course pack material. Course pack request forms and instructions are located in the college bookstore. Complete the form and submit it to the Textbook Manager. (See *Appendix A* for a sample request form.) The average time for obtaining permission is **six weeks**. However, one can frequently expect **several weeks'** delay in cases where copyright owners are elusive. Faculty should remain sensitive to the timelines when submitting requests to the Textbook Manager. It is inappropriate to assume that a copyright owner's failure to respond to a request means that we may use the copyrighted material.

Be advised that copyright permission for course pack material is course specific. License from a publisher (usually the copyright owner) to use material in a course pack is good for that course only, for a certain number of copies, for a certain time period. This license is non-transferable and cannot be used in any other course at any other time.

For permission requests for non-course related material you have three options: 1) You may seek permission on your own by simply contacting the listed copyright holder; or 2) You may use a service that will seek permission for you in exchange for a fee. At *Appendix B* you will find a list of web addresses for a few well-known publishing houses and other resources that facilitate permission.

VII. PUBLIC DOMAIN

How do I determine if a work has entered the public domain?

Public Domain works are those that fall into any of the following three categories:

1. Publications dated 1922 or earlier.
2. Works that do not include a copyright notice and were first published before January 1, 1978.
3. Most United States government documents.

Once a work has acquired public domain status it is no longer eligible for copyright protection. Use of material of this status is permissible without the copyright owner's permission.

VIII. RESERVE AND INTERLIBRARY LOAN SERVICES

How much material may I place on reserve?

Library reserve services function as classroom adjuncts. Therefore, "Guidelines for Multiple Copies for Classroom Use" are relevant here. In addition, there are some useful guidelines specific to the library reserve context:

How many photocopied items are permitted on reserve for a course?

- A. How many items from one source? The amount of material should be reasonable in relation to the size of the source. Ordinarily, two chapters from a book or two articles from a periodical would be considered reasonable. Greater proportions of

copyright-protected sources will be accepted for reserve only with written permission from the copyright owner or indication of royalty payment.

- B. How many items altogether? There are several relevant considerations, including the four factors which determine fair use; the “Guidelines for Multiple Copies for Classroom Use”; and recent judicial history. Still, the quantitative threshold for exceeding fair use is problematic. Err on the side of caution and seek *timely* permission when the quantity of material you wish to use is questionable under fair use standards or the classroom guidelines.

Copies on Reserve must be marked: NOTICE: This material may be protected by copyright law (Title 17 U.S. Code)

Special restrictions apply to music Reserves. See sections on sound recordings and photocopying music.

The photocopies are considered to be the copier’s property. Although copyright law prohibits libraries from systematic copying to enhance their collections, an instructor may provide duplicate photocopies (three at most) when a course is large enough to require more than one of an assigned photocopy. If the Library or the instructor does not own an original, the instructor must provide written permission or indication of royalty payment for photocopies in excess of one.

Photocopies Obtained Through Interlibrary Loan

Section 108(d) of the Copyright Law of 1976 specifies that a library may copy “no more than one article or other contribution to a copyrighted collection or periodical issue, or to . . . a small part of any other copyrighted work.” The copy must become the property of the requestor, and its use is limited to “private study, scholarship, or research.”

Interlibrary Loan activities are further restricted in the aggregate by The National Commission on New Technological Uses of Copyrighted Works (CONTU). The commission was created in 1976 to develop guidelines to assist librarians and copyright proprietors in understanding the amount of photocopying for use in interlibrary loan arrangements permitted under the copyright law. These guidelines cap the amount of photocopying the Inter Library Loan office can request for the College community in any calendar year. The thrust of the “Guidelines” is to quantify the maximum number of photocopied articles—five—that can be requested from the most recent five years of a periodical the library does not subscribe to. Individuals requesting copies in excess of the CONTU allowance may be asked to pay a royalty or the fee necessary to obtain such copies commercially.

IX. MEDIA SERVICES AND AUDIOVISUAL MATERIALS

Does purchase of a film or video include ownership of the copyright?

No. As is the case with all other forms of media, ownership of the work itself does not automatically include ownership of the copyright. Exercising the rights of a copyright owner of audiovisual material is required as it is required with all other publications. However, there are exceptions to this general rule.

Films, Video, Laser, DVD And CD-ROM

Classroom Use

Possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be “performed.” For example, videocassettes from a video rental outlet usually bear a label that specifies “Home Use Only”. However, whatever their labeling or licensing, use of these media is permitted in an educational institution so long as certain conditions are met.

Section 110 (1) of the Copyright Act of 1976 specifies that the following is permitted:

Performance or display of a work by instructors or students 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 audiovisual 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.

1. They must be shown as part of the instructional program.
2. They must be shown by students, instructors or guest lecturers.
3. They must be shown either in a classroom or other school location devoted to instruction such as a studio, workshop, library, gymnasium, or auditorium if it issued for instruction.
4. They must be shown either in a face-to-face setting or where students and teacher(s) are in the same building or general area.
5. They must be shown only to students and educators.
6. They must be shown using a legitimate (that is, not illegally reproduced) copy with the copyright notice included. Further, the relationship between the film or video and the course must be explicit. Films or videos, even in a “face-to-face” classroom setting, may not be used for entertainment or recreation, whatever the work’s intellectual content.

Use Outside the Classroom

Besides use in classrooms, videocassettes and videodiscs that are owned by the College may ordinarily be viewed by students, faculty or staff at workstations or in small-group rooms in the Media and Technology Center. These videos may also be viewed at home (e.g., in a dorm room), so long as no more than a few friends are involved. Larger audiences, such as groups that might assemble in a residence hall living room, require explicit permission from the copyright owner for “public performance” rights.

Copying Videotapes / Off-Air Recording of Broadcasts, Including Satellite TV

Copying videotapes without the copyright owner’s permission is illegal. An exception is made for libraries to replace a work that is lost or damaged if another copy cannot be obtained at a fair price [Section 108 of the Copyright Act of 1976].

Licenses may be obtained for copying and off-air recording. Absent a formal agreement, “Guidelines for Off-the-Air Recording of Broadcast Programming for Educational Purposes,” an official part of the Copyright Act’s legislative history, applies to most off-air recording:

1. Videotaped recordings may be kept for no more than 45 calendar days after the recording date, at which time the tapes must be erased.
2. Videotaped recordings may be shown to students only within the first 10 school days of the 45-day retention period.
3. Off-air recordings must be made only at the request of an individual instructor for instructional purposes, not by staff in anticipation of later requests.
4. The recordings are to be shown to students no more than two times during the 10-day period, and the second time only for necessary instructional reinforcement.
5. The taped recordings may be viewed after the 10-day period only by instructors for evaluation purposes, that is, to determine whether to include the broadcast program in the curriculum in the future.
6. If several instructors request videotaping of the same program, duplicate copies are permitted to meet the need; all copies are subject to the same restrictions as the original recording.
7. The off-air recordings may not be physically or electronically altered or combined with others to form anthologies, but they need not necessarily be used or shown in their entirety.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. These guidelines apply only to nonprofit educational institutions, which are further expected to establish appropriate control procedures to maintain the integrity of these guidelines.

X. MEDIA SERVICES AND SOUND RECORDINGS

Are there guidelines for the use of sound recordings?

Yes. The general rule that requires permission for use of copyright materials applies here. But, as with all other forms, exceptions to this rule exist.

Non-Music Recordings

Cassettes or disks may not be copied unless replacement recordings from a commercial source cannot be obtained at a fair price. Recording brief excerpts is considered fair use, however.

Music Recordings

A single copy may be made for the purpose of constructing aural exercises or examinations. Otherwise, the restrictions on copying non-music recordings apply.

Photocopying Music for Educational Purposes

What Quantity Conforms to the Law?

For a Performance - Emergency copying is permitted so long as replacement copies are subsequently purchased.

Single Copies for Personal or Library Reserve Use (Academic Purposes Other Than Performance) - An entire performable unit (section, movement, aria, etc.) if the unit is out of print or available only in a larger work.

Multiple Copies for Classroom (Non-Performance) Use - Excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.

Slides and Photographs

Reproduction – Whenever possible, Westmont will either purchase slides and photographs from authorized sources or will borrow from institutions which offer licensing for single-copy reproduction. In either case, further copying would be prohibited.

Occasionally, slides of copyrighted images that are needed for classroom purposes cannot be obtained ready-made in a timely fashion. If the process of slide-making would fail to meet Fair Use requirements, the requestor must demonstrate that the copyright owner has granted permission.

Display – Copyright ownership of slides and photographs encompasses control over display as well as reproduction. However, Section 110 of the Copyright Act of 1976 addresses the display of copyrighted slides and photographs in educational settings by allowing “display of a work by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction” so long as the copy of the artwork was lawfully made. Furthermore, the purpose of the display must be integral to the course.

XI. EDUCATIONAL MULTIMEDIA FAIR USE

Can I use copyrighted material in a multimedia work that I have created for educational purposes without obtaining the copyright owner's permission?

Yes, but within certain limits. Key elements of the Educational Multimedia Fair Use Guidelines are summarized below. The Guidelines specify how much of copyright-protected sources may be included in multimedia products prepared by students or faculty members for course-related work. Use of larger portions requires permission from copyright owners. Creators of multimedia products may prepare a total of three copies, one of which is for preservation and replacement purposes only. One of the copies may be placed on Library Reserve. An exception is allowed for joint projects: each principal creator may retain a copy. Fair Use status expires two years after the first instructional use of a particular multimedia product.

How Much

Motion Media

Up to 10% or 3 minutes of a source, whichever is less.

Text

Up to 10% or 1000 words of a source, whichever is less. An entire poem of less than 250 words, but no more than 3 poems or excerpts by one poet. No more than 5 poems or excerpts from one anthology.

Music, Lyrics, Music Video

Up to 10% but not more than 30 seconds total from an individual work.

Illustrations, Photographs

No more than 5 images by one artist or photographer. No more than 10% or 15 images, whichever is less, from any single published work.

Numerical Data Sets

Up to 10% or 2500 fields or cell entries, whichever is less.

Internet Sources

Though it can be difficult to determine what is copyright protected and what is in the public domain, the multimedia creator is responsible for adhering to copyright law.

Opening Screen Notice

“Certain materials are included under the fair use exemption of U.S. Copyright Law and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use.” Credit the sources and display the copyright notice and copyright ownership information if shown in the original source. Crediting the source must adequately identify the source of the work, giving a full bibliographic description where available (including author, title, publisher, and place and date of publication). The copyright notice includes the word “Copyright” or the copyright symbol, the name of the copyright holder, and the year of first publication.

Integrity of Sources

Any alterations of copyrighted items must be noted.

**XII. DIGITAL MILLENNIUM COPYRIGHT ACT/RESPONSIBLE USE
POLICY FOR THE INTERNET**

Am I free to copy whatever appears on the Internet?

No. The Digital Millennium Copyright Act signed into law in October 1998 updates the Copyright Act for digital materials. Although the principle of fair use does not generally apply to the digital world, fair use may apply for specific uses. For example, digital course reserves, removed at the end of the course, would likely be protected under the principle of fair use.

For the full text of the Act go to <http://www.loc.gov/copyright/legislation/hr2281.pdf> You will need to download Acrobat Reader if you have not already installed the program on your computer.

XIII. PERFORMING ARTS

Is it necessary to obtain permission for student performances of copyrighted works?

Yes. One of the exclusive rights given to the copyright holder is the right to control performances of all copyrighted works. Section 110(1) of the Copyright Act provides a limited exception to that right. Professors and students may perform (show) copyrighted works in the classroom. Under this exception, professors or students in a non-profit institution, in a classroom or similar place of instruction may carry out the performance. This exception only applies to performances in face-to-face instruction in a course given for academic credit. It does not cover performances for entertainment or recreational purposes. It does not authorize performing works in common areas of student housing. “Non-theatrical public performance licenses” are required to perform audiovisual works in those circumstances or locations. Performing dramatic works requires an appropriate license from the playwright’s agent. In addition, any copyrighted work incorporated into an original student or faculty dramatic work requires permission from the copyright holder.

Listed below are the some exceptions to the general copyright rule that requires permission for performance of copyrighted works.

1. **Dramatic Works:** The right of a copyright owner to perform a dramatic work publicly precludes all public performances of a play, opera, operetta, or musical comedy without a license. Dramatic works may be performed in the classroom under section 110 exception of the Copyright Act, but all requirements of that section must be met, including the requirement that attendance be limited to the professor and the students enrolled in the course.
2. **Music:** The college holds licenses with Broadcast Music, Inc. (BMI) and American Society of Composers, Authors and Publishers (ASCAP). These licenses grant the college non-theatrical public performance rights to music found in ASCAP’s and BMI’s catalogs. Note that this is not *really* an exception to the permission requirement. ASCAP and BMI seek permission for our performances in exchange for a fee. These licenses simply relieve us of the burden of seeking permission on our own.
3. **Student Projects:** While the law does not specifically address student uses of copyrighted works, the Senate report accompanying the Copyright Revision Act of 1976 identified “special uses” by students. Based on certain statements, a consensus has developed that students may copy copyrighted works as a learning exercise. This suggests that students can integrate all types of materials into sound/slide, film, or television productions. Programs made under this exemption may be submitted for a grade, and may be shown to the other students in the class. However, the paper or product must remain the property of the student. The professor or the institution may not retain copies. It may not be shown, transmitted, or broadcast outside the classroom, and no copies may be sold or given away.

APPENDIX A

Copyright QuickClear Check either **A.** or **B.**

Use this form whenever the documents to be copied appear to contain commercially published material.

A. I can take the Shortcut! (Initial here: _____ and attach this form to your Repro or Textbook order)

This can be duplicated as a qualified educational "fair use" because ...

1) ... IT'S BRIEF. I'm not creating or replacing an anthology or collective work, **AND** I don't need more from any one publication than:

- 1 poem [less than two pages], **OR**
- 1 article/chapter of prose, **OR**
- 1 illustration, chart, diagram, drawing, or cartoon, **OR**
- 2 published pages from a children's book (such as Dr Seuss).

2) ... IT'S SPONTANEOUS. Its use is at my own inspiration, **AND** it has not been and will not be used in more than a single semester, **AND** less than 12 weeks will elapse between my decision to use it and its actual use in class.

3) ... MY USE DOES NOT HARM THE COPYRIGHT HOLDER. The material is not "consumable" (eg, workbooks, exercises, standardized tests, and the like), **AND** at least one of the following is true:

- it will not substitute for the purchase of the publication; **OR**
- my use has been authorized by the copyright holder (by purchase of the right to duplicate, or by express consent, such as a test bank); **OR**
- I **am** the copyright holder; **OR**
- The material is in the public domain (published before 1922, or published before 1978 with no copyright notice).

AND 4) ... IT WILL BE REPRODUCED PROPERLY. It will include the copyright notice (using standard bibliographic notation), **AND** students will be charged no more than the cost of making it available for them (ie, no "profit" will be realized by the provider).

B. It's not so simple this time. (Check boxes as applicable on reverse and attach to Repro or Textbook order)

S:\Risk\Forms\Copyright QuickClear.doc - 05/29/2003

B. The Copyright Gauntlet (This form and accompanying materials will be evaluated immediately to determine whether permission appears needed. If so, you will be consulted so any permission request can be pursued without undue delay.)

1. Which best describes the *extent and purpose* of your intended use?

<input type="checkbox"/> One semester	<input type="checkbox"/> More than one semester
<input type="checkbox"/> One single course	<input type="checkbox"/> More than one course

2. What is the *nature of the copyrighted work* you want to use?

<input type="checkbox"/> Factual	<input type="checkbox"/> Imaginative
<input type="checkbox"/> Unpublished	<input type="checkbox"/> Published

3. *How much* of the copyrighted work do you want to use? *Rule of Thumb: The following amounts are considered "fair": a) One complete essay or article of approximately 2,500 words or less; b) An excerpt of a work equal to no more than approximately 1,000 words, or 10% of the whole work, whichever is less; or c) One complete work of 1,000 words or less if not intended for children.*

<input type="checkbox"/> Under 500 words, or fits this definition of "fair"	<input type="checkbox"/> More than the defined-as-fair portion/s of the work
-----------------------------------------------------------------------------	------------------------------------------------------------------------------

4. How many selections or excerpts from the *same author* are you going to use this semester?

<input type="checkbox"/> One whole selection *	<input type="checkbox"/> Two or more whole selections
<input type="checkbox"/> Not more than two excerpts *	<input type="checkbox"/> Three or more excerpts

5. How many selections from the *same publication* are you going to use this semester?

<input type="checkbox"/> Three or less *	<input type="checkbox"/> Four or more
------------------------------------------	---------------------------------------

6. On *how many separate occasions* will you copy from various publications in this manner this semester?

<input type="checkbox"/> Nine times or less *	<input type="checkbox"/> Ten times or more
-----------------------------------------------	--------------------------------------------

7. *When* do you want to use this work?

<input type="checkbox"/> Less than five weeks from now	<input type="checkbox"/> Six weeks or more from now
--------------------------------------------------------	-----------------------------------------------------

8. If everyone did what you want to do, what would be the *effect on the market*? (Rule of Thumb: Is copying this material simply a substitute for purchasing? If so, it would have a substantial effect.)

<input type="checkbox"/> Little/no effect on the market for the original work	<input type="checkbox"/> Substantial effect on the market for the original work
-------------------------------------------------------------------------------	---------------------------------------------------------------------------------

9. What is the *cost to students* (including copying, packaging, and handling)?

<input type="checkbox"/> Will not substantially exceed the cost of copying	<input type="checkbox"/> Will substantially exceed the cost of copying
----------------------------------------------------------------------------	------------------------------------------------------------------------

* - check here if using current news from periodicals or newspapers (unlimited educational use is authorized by law).

Section 4. List of Works

Citation Listing Form (supplemental to Item B.)

Only complete this list if Item **B.** must be checked on the *Copyright Quickclear form*. You do not need to complete this list if **all** the works to be copied qualify for educational "fair use" and you've thus checked Item **A.** on that form.

For further information on copyright see the *Copyright Policy and Resource Guide on Westmont's website at www.westmont.edu/faculty_staff/pages/policies/copyright_policy/index.html*

Identifier	A. Title of Work	E. If the book is "out of print", put OP in this space	
		F. ISBN	G. Edition
		H. Copyright Year	I. If <i>published before 1976, enter year</i>
	D. Chapter/Article Name(s)	J. Total Pages in Work	K. Number of Pages to be Copied
Work #1	1-A	1-E	
1-B		1-F	1-G
1-C		1-H	1-I
1-D		1-J	1-K
Work #2	2-A	2-E	
2-B		2-F	2-G
2-C		2-H	2-I
2-D		2-J	2-K
Work #3	3-A	3-E	
3-B		3-F	3-G
3-C		3-H	3-I
3-D		3-J	3-K
Work #4	4-A	4-E	
4-B		4-F	4-G
4-C		4-H	4-I
4-D		4-J	4-K
Work #5	5-A	5-E	
5-B		5-F	5-G
5-C		5-H	5-I
5-D		5-J	5-K
Work #6	6-A	6-E	
6-B		6-F	6-G
6-C		6-H	6-I
6-D		6-J	6-K
Work #7	7-A	7-E	
7-B		7-F	7-G
7-C		7-H	7-I
7-D		7-J	7-K
Work #8	8-A	8-E	
8-B		8-F	8-G
8-C		8-H	8-I
8-D		8-J	8-K

APPENDIX B

Seeking permission on your own? The following web addresses are ordered by media type. You may find information at these (See *Appendix C* for steps on how to seek permission on your own.)

Print Media

Copyright Clearance Center: <http://www.copyright.com/>

Publication Rights Clearinghouse: <http://www.nwu.org>

Campus Custom Publishing, Inc.: <https://www.xanadu.com/higher-education/educators/copyright-clearance/>

Music

All Music Guide: <http://www.allmusic.com/>

ASCAP: <http://ascap.com/>

BMI: <http://bmi.com>

Harry Fox Agency: <https://www.harryfox.com/#/>

SESAC: <http://www.sesac.com/>

Photographs

Picture Network International: <http://www.auroraphotos.com>

American Society of Media Photographers: <http://www.asmp.org>

Movies/Films

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

APPENDIX C

(Seeking Permission on Your Own)

It's not as difficult as it sounds. In fact permission may just be a phone call away. The following procedure is a way to seek permission from the copyright owner directly.

1. Although the copyright owner and the author of a work are not necessarily the same person, it is wise to start with the author. If this person is not the copyright owner, he or she will most likely be able to tell you who is.
2. Should you have no luck with the author, begin your search with the infamous "©." Next to that symbol you will find the copyright year and the copyright owner.
3. There are several well-known clearinghouses that appear consistently as copyright owners. At Appendix B you will find various web addresses that furnish contact information for those copyright owners.
4. Sometimes the *apparent* copyright owner (that person or company named next to the "©") and the actual copyright owner are different. The U.S. Copyright Office provides online searching of all registered copyrighted works. The office will also provide professional research for a fee. The cost for this service varies. You may reach the Copyright Office online at: <https://www.copyright.gov/>
5. Once you have found the copyright owner they will need *at least* the following information from you before granting license/permission. The information requested will vary from owner to owner. These are simply the basics:
 - Title of the work
 - Author
 - Year of publication/copyright
 - Amount of the work you wish to use
 - Length of time you will use the work
 - Purpose of your use
6. Always get your permission in writing. Often authors who own the copyright on their creations are simply willing to grant permission to you after a brief phone call. Offer to write a letter of permission for him or her to sign if one is not furnished for you. If you are writing the letter yourself include the information from "Step 5" in your letter, and all other agreements you make with the copyright owner. Should you need assistance with this contact ????????