

RWC/NES Copyright Policy Manual

compiled by the
Copyright Task Force
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Roberts Wesleyan College and Northeastern Seminary Copyright Policy

Robert Wesleyan College Policy 435

<https://rwc.roberts.edu/hr/Policies/ShowPolicies.aspx?id=21&sort=A> [Intranet/Administration/HR/Payroll/Policies/Alphabetical/Administration Policies and Procedures/435]

Policy and Procedure Page 1 of 1

SUBJECT: Copyright Compliance Policy

Applies to: All Employees

Written: September 2005

I. Policy:

It is the policy of Roberts Wesleyan College to comply with all laws pertaining to the proper use of copyrighted materials. These regulations protect works of original authorship such as books, articles, memoranda, texts, computer programs, musical works, dramatic works, pictorial works, motion pictures and other audiovisual works, multimedia works, web pages and sound recordings.

The College respects the exclusive rights of a copyright holder to authorize the reproduction of any given copyrighted material. It is also understood that copyright infringement can incur significant civil and criminal penalties.

Legal reproduction of copyrighted materials is allowed in certain circumstances, such as what is known as “Fair Use” situations. It is expected that any unauthorized reproduction of materials will fall under the “Fair Use” category or other allowable exemptions. All other reproductions must be authorized by the proper holder of the copyright.

For complete information on copyright law and what constitutes “Fair Use”, please refer to the U.S. Copyright Office website at <http://www.copyright.gov/> or contact the Office of Human Resources.

What is Copyright?

Why should you care about copyright?

Copyright is complex and often misunderstood. There is much uncertainty about what can be legitimately reproduced for classroom and/or on-line use because copyright is not a set of black and white laws. Rather, decisions are based on general principles and open to interpretation. This manual is intended to help clarify and guide decision-making as faculty endeavor to provide students with access to educational resources including resources that are protected under copyright.

- The United States Constitution (Article 1, sec. 8, clause 8) states that Congress intends to promote progress by guaranteeing authors and inventors exclusive rights to their writings and discoveries.¹ Since 1978, any original work in a fixed form automatically is granted copyright protection for the life of the author plus 70 years.
- Title 17 of the United States Code includes the Copyright Act of 1976 and all amendments, including:²
 - The Digital Millennium Copyright Act (DMCA) of 1998.³ This brought US copyright into agreement with worldwide copyright treaties and dealt with handling digital content. DMCA establishes limits of liability for online service providers including colleges and universities. It prohibits the circumvention of technological protection measures.
 - The Technology, Education and Copyright Harmonization Act (TEACH) of 2002 addresses the digital use of copyrighted works. It permits digital transmission of copyrighted works without getting permission, but establishes limitations more restrictive than Fair Use.

To read these laws, see www.copyright.gov

Some progress has been made in defining copyright and Fair Use (covered on p. 6) more clearly in the recent Georgia State court case, *Cambridge University Press v. Becker* (2012). This case has gone into appeal but bears watching for final decision.

Be aware that since 1976, once a work is created, whether in print, digital, or visual format, it is copyrighted. It is not necessary for works to be registered or to have an official copyright notation.

¹ The Charters of Freedom: The Constitution, The U. S. National Archives and Records Administration (NARA) http://www.archives.gov/exhibits/charters/constitution_transcript.html (accessed March 20, 2013).

² Copyright Law of the United States, US Copyright Office <http://www.copyright.gov/title17/> (accessed March 20, 2013).

³ The Digital Millennium Copyright Act, US Copyright Office <http://www.copyright.gov/title17/92appb.html> (accessed March 20, 2013).

Copyright Compliance for RWC/NES Constituents

Roberts Wesleyan College and Northeastern Seminary are committed to fostering an environment that provides for the fair use of copyrighted materials and the understanding of how to assess usage while remaining in compliance with applicable laws. This includes §107 (Fair Use), §108 (Reproduction by Libraries and Archives), §109 (First Sale Doctrine and Transfers) and §110 (Teaching Exception) and other statutory exemptions and limitations to the exclusive rights granted to the owner of a copyright protected work.

While RWC/NES does not intend to unduly restrict the use of works otherwise permitted under the law, it is the policy of this institution to comply with federal copyright law and all related law codified at 17 U.S.C..

All members of the RWC/NES community are expected to abide by the institutional copyright policy and to seek assistance from **the designated copyright committee** as needed. RWC/NES will inform and educate constituents concerning compliance with the law and the acceptable ways to utilize copyrighted materials in the pursuit of academic endeavors.

Failure to abide by copyright law may mean that you are liable for copyright infringement and may be held accountable in a court of law.

Why should you care about Copyright?

It shows respect for intellectual property and its creators.

Given the visibility of online instruction and the boldness of economically challenged publishing companies, more litigation is happening, especially concerning academic institutions. There have been a number of major cases tried in the last few years. Penalties can be harsh – up to \$150,000 for EACH infringement. For Case Studies, see Columbia University’s summaries at <http://copyright.columbia.edu/copyright/fair-use/case-summaries/>

Besides, it is the law. The RWC Community Ethos Statement makes it clear that as Christians, “...faculty and staff are expected to serve as role models for the students within the College community – role models whose Christian lifestyles are characterized by the positive virtues of honesty, integrity, justice and caring.”⁴

⁴ “Community Ethos Statement.” Roberts Wesleyan College. August, 2005.

Public Domain

When a work is in the public domain, it is no longer protected by copyright and may be used freely by anyone. See Laura Gasaway's chart below for more information. Laura is a known copyright lawyer and Dean of the Law School at UNC Chapel Hill.

<http://www.unc.edu/~unc/ncg/public-d.htm>

You can also go to www.copyright.gov to check the copyright status of works. However, it should be noted that while renewed works are registered at that website, not all renewal records are immediately available electronically.

- Some items, particularly government publications, are not under copyright [census data, laws, etc.]
- Known facts are not under copyright
- Some publications enter public domain 70 years after the author's death
- Sometimes the creator did not satisfy requirements to perfect copyright
- If the work was published before 1923, it is in the public domain.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression (on paper, hard drive of a computer, etc.)	Life + 70 years¹(or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation²
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice³	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

Fair Use

Fair Use is defined in §107 as allowing the copying of work for the purposes of criticism, comment, news reporting and teaching (including multiple copies for classroom use). It is not a blanket permission to use whatever a professor wants just because it is being used in an academic endeavor. Such copying must satisfy four factors:

1. The purpose and character of the use (commercial? Nonprofit educational purpose?)
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the whole
4. The effect of the use on the potential market for or value of the work

An acronym for remembering these factors, in a slightly different order, is **PANE** (Purpose; Amount; Nature; Effect). There are limitations. Each item must be considered on a case by case basis. There is no agreement among copyright experts about specifics that would allow for Fair Use. Those who invoke the Fair Use exemption should be able to show good reason why they believe Fair Use applies. RWC/NES admittedly recommends a conservative approach and these guidelines reflect that. Fair Use remains an individual decision. See the Fair Use Checklist for a guide in making decisions.

Factor 1: Purpose and Character of the Use

<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Nonprofit Educational Institution	Commercial activity, profit from use
Used for Purpose of Teaching (including multiple copies for classroom use) and/or Scholarship or Criticism, Comment, News Reporting, or Parody	For public distribution
Used for noncommercial, nonprofit educational use	Used for entertainment
Transformative (use changes work for new utility or purpose)	Mirror image copying
Use is necessary to achieve your intended educational purpose	Use exceeds that which is necessary to achieve your intended educational purpose

Factor 2: Nature of Copyrighted Work

<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Published work	Unpublished work
Factual/informational and educational in nature or nonfiction work	Fiction or highly creative work (art, music, novels, films, plays, poetry)
Non-consumable work	Consumable work (workbook, test)

Factor 3: Amount and Substantiality of Portion Used

Weighs in Favor of Fair Use

Weighs Against Fair Use

Decidedly small portion of work used (no more than 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)	Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
Portion used is not central or significant to entire work as a whole	Portion used is central to work or “heart of the work”
Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose	Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
Access limited to students enrolled in course for only the term of the course	Access not limited

Factor 4: Effect on Market for Original

Weighs in Favor of Fair Use

Weighs Against Fair Use

Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price	Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
Decidedly small portion used	Large portion or entire work used
User owns lawfully acquired or purchased copy of original work	User does not own lawfully acquired or purchased copy of original work
Use stimulates market for original work	Use impairs the market or potential market for original work

Guidelines for Helping Determine Best Practices for the Use of Copyrighted Material

Faculty Decision Guide

To assist in determining how to best use resources, the following guide can be followed:

1. Is it in the public domain (no longer protected by copyright)?
 - a. Yes – you can use it
 - b. No – is there an exception that will allow us to use it?
 - i. Yes (see 2 below) – can use
 - ii. No – must ask permissions: Permissions granted?
 - a. Yes – use with attribution
 - b. No – can you pay for the use?
 - i. Yes – can use
 - ii. No – cannot use – see #3 below for locating comparable material
2. Exceptions
 - a. Available through the Golisano Library databases so that you can direct link
 - b. Copyright belongs to the faculty person
 - c. Fair Use – weigh the four factors (PANE = Purpose, Amount, Nature, Effect):
See Fair Use Checklist
 - i. Purpose and character of the use (non-profit vs. commercial)
 - ii. Nature of the copyrighted work
 - iii. Amount and substantiality of the portion used in relation to the whole
 - iv. Effect of the use on the potential market
3. If you do not have time to follow through with asking permissions or if the item you wish to use presents complicated issues, find something that is free to use or less complex. Substitute something you know is comparable which avoids the copyright issues.
 - a. Open Access
 - b. Creative Commons materials

Face To Face Instruction

Copies of Journal Articles or Book Chapters and Other Print Resources

(Section 107 of Copyright Revision Bill)

- Single Copies
 - 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work
 - One Article from a periodical or newspaper
 - A short story, short essay or short poem
 - A chart, graph, diagram, drawing, cartoon, or picture
- Multiple Copies – maximum of one copy per student in class (Section 107 of Copyright Revision Bill)
 - Must meet criteria for Brevity -
 - Complete poem if less than 250 words and if printed on two or fewer pages; or excerpt of poem 250 words or less
 - Complete article, story, or essay of 2500 words or less; or an excerpt from any work of not more than 1000 words or 10% of the work whichever is less
 - One chart, graph, diagram, drawing, cartoon, or picture per book or periodical
 - Each copy must include a notice of copyright and the appropriate citation information. See W:\Library\Copyright Task Force for templates
 - Creating a course pack (multiple resources bound together) requires that permissions be obtained for every resource included since you are in essence creating an anthology. **This is the most litigious area of copyright.** If you do create a course pack, make sure you have the appropriate permissions, which may require paying of fees
- Prohibitions
 - Considerations concerning the Cumulative Effect of copying
 - Copying can be for only one course
 - Not more than one chapter, article, poem, diagram, etc., from the same author, nor more than three from a collective work or periodical volume
 - Copying cannot be used to create, replace, or substitute for anthologies, compilations, or collective works.
 - Copying cannot be done from works that are intended to be “consumable” (i.e., workbooks, exercises, standardized tests, test booklets, answer sheets, etc.)

- Copying cannot substitute for the purchase of books, reprints, periodicals

Music (Section 107 of Copyright Revision Bill)

- Permitted Uses: Scores
 - Emergency copying of scores to replace purchased copies that are unavailable for an imminent performance (replacement copies must be purchased eventually)
 - For academic purposes (not performance) – single or multiple copies of excerpts of scores can be made as long as:
 - Excerpts do not comprise a part of the whole which would constitute a performable section, movement, or aria, but in no case more than 10% of the whole work; one copy per student only
 - Printed copies of purchased materials may be edited or simplified provided that the fundamental character of the work is not distorted, or the lyrics, if any, altered or lyrics added if none exist.
- Permitted Uses: Recordings
 - Single copies of recordings of performances by students can be made for evaluation or rehearsal purposes and may be kept by professor or institution
 - Single copy of a sound recording (tape, CD, cassette) of copyrighted music may be made from recordings owned by an educational institution or teacher for the purpose of constructing aural exercises or examinations and may be retained by the institution or teacher.
- Prohibitions
 - Copying to create or replace or substitute for anthologies, compilations, or collective works.
 - Copying consumables
 - Copying for the purposes of performance, except in emergencies
 - Copying as a substitute for purchase
 - Copying without a copyright notice on printed copy. See W:\Library\Copyright Task Force for templates

Movies and Visual Materials

- Faculty can lawfully show a movie in the classroom **provided it is relevant to the course and not being used for entertainment purposes**. Otherwise, faculty must receive written permission from the distributor or copyright holder for public viewing of an entire work

- Cannot rent DVD's or VHS movies from a video store for public viewing or classroom use of an entire work without permission if not for educational non-entertainment purposes
- If you own a movie and want to show it in a class setting, you must obtain permission as this is considered a public viewing (if outside of bolded guidelines above)
- You may use clips of movies within reason (cannot use 60 minutes of a 2 hour movie)
- If you purchase an educational video from PBS or any educational outlet, a license must be purchased
- Video and audio recordings from the internet are covered by the same copyright rules. Make sure the material is legally posted and gives viewing permission (You Tube monitors their site and removes illegal postings when alerted.)
- Images, video clips and music in a power point presentation are acceptable, but images should not be included in power point handouts unless you have permission and provide appropriate credit.
- If you own a VHS version of a film or movie and there is no digital copy available for purchase, a digital copy can be created for preservation purposes.

Library Reserves

- Golisano Library does not put paper copies of articles or book chapters on physical reserve.
- Any books, full issues of journals and media that the library or faculty person owns can be placed on physical reserves. Loan term can be determined by faculty (2 hours, 1 day, in library only, can check out, etc.)

Additional Information Concerning Online Teaching

Caveats Concerning Online Access (CMS)

Faculty who are posting articles, readings, etc. from copyrighted material on CMS should consider the following recommendations:

- Use of works should be related to course content and limited to only the amount you would use in a face-to-face classroom setting.
- Transmission must be limited to students officially enrolled in the class. Student access to copyright material should end following his or her completion of the course.
- Freely use materials in the public domain or materials for which you own the copyright (e.g., exams, syllabi, notes). Often you can find primary texts online posted by creator or institution, giving permissions for use or linking.
- Whenever possible provide links to full text articles in the Library's databases or to other web sites. **Do not download them onto your own site or email them to students.** Instructions for linking full text articles are provided by the Library. See W:\Library\Copyright Task Force\Safely Sharing Articles with your Students Creating Permalinks.docx for instructions. The Library oversees the contractual agreements for these licensed electronic resources. [For more information about the use of electronic databases, see <https://www.lib.umn.edu/about/acceptableuse>]
- A bibliographic citation and notice of copyright must appear on the first page of each item. Templates are available at W:\Library\Copyright Task Force. For your own records, it would be helpful to fill out the Fair Use Form and keep it on file.
- When in doubt, contact the Copyright Committee and/or seek permission from the copyright holder.

Additional Information Concerning Distance Education or Virtual Instruction

Distance education comes in many different forms and almost invariably the process of digitizing, uploading, and delivering content raises copyright issues. Much of the content will be protected by copyright law, and to the extent that the program is using someone else's copyrighted works, the instructor or institution needs to resolve copyright questions.

As an instructor you may ordinarily use materials in distance education under one of the following circumstances:

- Your materials are in the public domain and not protected under copyright, or
- You have permission from the copyright owner, or
- Your use is within fair use, or
- Your use is within the requirements of the TEACH Act. For detailed information about the TEACH Act, see <http://copyright.columbia.edu/copyright/special-topics/distance-education/>

Repeated Use

According to the June 2011 ruling in the Georgia State University case [Cambridge University vs. Becker], the judge determined that repeatedly using material from one semester to the next is NOT in violation of Fair Use. She determined that if something is useful over a period of time, it simply indicates that the work is a classic in its field. What is Fair Use for one semester is Fair Use for all semesters. For more information on this decision, see <http://bit.ly/11RAbEI>

Student Works

Original student works – papers, artwork, compositions, term papers, musical compositions, Master’s thesis and dissertations, etc. – belong to the student and permissions must be obtained before they can be posted or copied for use.

Library Services for Reserves

- Links to the full text of journal articles from Golisano databases can be placed on reserve in your CMS in accord with the vendor’s license agreement. The copyright considerations are covered by the purchase of the database.
- Can only use what is determined to be “decidedly small” amount of articles owned by the library or the faculty person that are not available in the databases. The descriptions below are examples of how that might look.
 - One article from a journal or one chapter from a book less than 10 chapters or 10% of a book with more than 10 chapters
 - Course notes or Course syllabi
- Examples requiring copyright permission
 - More than one chapter or 10% from a book or more than one article from an issue of a journal
 - Articles from multiple sources that comprise an anthology to be used as a text for a course

Library Reserves

Materials placed on reserve in the library must comply with copyright law and RWC/NES policy. Requests that are not within the Fair Use guidelines will not be honored without permission from the copyright holder. Please note that such permissions take time to settle and may cost money. Cost will be billed to the department.

Physical Reserves

The Golisano Library places materials on physical reserves at the Circulation Desk. These items (books, CD's, DVD's, VHS) can be checked out for whatever length of time the professor determines to be best (2 hr., overnight, 3 day, etc.). Items must be owned by either the library or the professor. No interlibrary loan materials may be placed on reserve.

Online Reserves

Golisano Library will research and send a professor links to online materials from our electronic resources and databases. Links to such materials are copyright compliant in accord with our vendor licenses and the cost is covered.

Golisano Library will scan articles from our print journals or chapters from our books to link to your CMS. We can create a document of links and scans to upload to your CMS. Either the library or the professor must own the journal or book in which the scanned article is published.

Examples of reserve materials that are within Fair Use:

- 1 article from a journal issue
- 1 chapter or 10% of a book
- Links to articles in Golisano Library's databases

Examples of reserve materials that are NOT within Fair Use:

- Consumables – tests, workbooks
- More than one chapter or 10% from a book
- More than one article from a journal issue
- Student papers without student permission
- Articles from multiple sources collected together into an anthology

FAQ's

Once questions come to us, we can determine which ones it would be helpful to include here.

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