

Copyright Policy

Applies to: All members of the Wellesley College community

Summary

The Wellesley College Copyright Policy establishes guidelines regarding the Fair Use of copyrighted material, use of multimedia and copyrighted works in the classroom, and information regarding the Digital Millennium Copyright Act.

- Copyright FAQ
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1.0 Policy Statement

The Wellesley College Copyright Policy establishes guidelines regarding the Fair Use of copyrighted material, use of multimedia and copyrighted works in the classroom, and information regarding the Digital Millennium Copyright Act.

2.0 Overview & Purpose

Wellesley College's copyright policy is based upon [United States Copyright Law, Title 17, U.S. Code, 1976](#). The copyright law of the United States governs the making of photocopies or other reproductions of copyrighted material. Our policies are based on careful review of the law itself, the [Fair Use of Guidelines of 1997](#), the [TEACH Act of 2002](#), the [Digital Millennium Copyright Act](#), and the [DMCA exemptions of 2006](#).

This guide has been prepared in an effort to help the Wellesley College community better understand what is allowable by law, and why some services that are technically possible may nevertheless be restricted. Wellesley College will always remain open to receiving any new information on or interpretation of copyright law.

3.0 Scope

This policy applies to all members of the Wellesley College community, including faculty, staff, students and alumnae, and any other person who has access to information technology resources at Wellesley College.

4.0 Policy

4.1 Responsibilities

Compliance with the federal copyright law and with this policy is the responsibility of every member of the Wellesley College community, including faculty, staff and students. All members of the Wellesley College community are expected to take a personal interest in becoming informed about how copyright law affects our work at Wellesley College.

This policy has been approved by the Advisory Committee on Library and Technology Policy and the President's Cabinet. The Wellesley College Copyright Officer has responsibility for this policy. Questions or concerns about this policy should be directed to the Wellesley College Copyright Officer at copyrightofficer@wellesley.edu.

4.2 General Information About Copyright

Copyright grants to the author or originator the sole and exclusive privilege of creating multiple copies of literary or artistic productions and publishing and selling them. Copyright protection exists for original works fixed in any tangible medium of expression, including:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic work;
- pictorial, graphic, and sculpture work;
- motion pictures and other audiovisual works;
- sound recordings.

4.3 Copyright Protections and Fair Use Principles

To help members of the Wellesley College community understand and comply with copyright laws, this document summarizes basic principles of copyright law including the application of the fair use balancing test. The principle of Fair Use offers additional access privileges in educational settings.

Copyright law is inherently complex. A fair use of a copyrighted work depends upon a specific determination based upon the circumstances of the use. The principles below are intended to provide an initial context for complying with the law.

Principle 1: The copyright holder has important and exclusive rights. Copyright law protects original works such as writings, music, visual arts, and films by giving the copyright holder a set of exclusive rights in that work. These rights include the right to copy, distribute, adapt, perform, display, and create derivative or collected works. In general, any use of copyrighted materials requires permission from, and potentially payment of royalties to, the copyright holder unless the use falls within an exemption in the law, such as the [fair use](#) exemption.

Principle 2: Responsible decision-making means that Wellesley College community members must make demonstrable good faith efforts to understand the fundamentals of copyright law and the reasonable application of fair use. When Wellesley College community members plan to use a copyrighted work in their teaching or research, they must examine the specifics of their use within the context of the law in order to determine whether they should seek permission for the use or depend instead upon the fair use exemption.

Principle 3: An appropriate exercise of fair use depends on a case-by-case application and balancing of four factors as set forth in a statute enacted by Congress. A proper determination of fair use – in daily practice and in the courts – requires applying these four factors to the specific circumstances of the use. These factors must be evaluated to determine whether most of them weigh in favor of or against fair use. The four factors include:

1. The purpose and character of the use, including whether the copied material will be for nonprofit, educational, or commercial use. This factor at first seems reassuring; but unfortunately for educators, several courts have held that absence of financial gain is insufficient for a finding of fair use.
2. The nature of the copyrighted work, with special consideration given to the distinction between a creative work and an informational work. 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. Duplication of material originally developed for classroom consumption is less likely to be a fair use than is the duplication of materials prepared for public consumption. For example, a teacher who photocopies a workbook page or a textbook chapter is depriving the copyright owner of profits more directly than if copying one page from the daily paper.
3. The amount, substantiality, or portion used in relation to the copyrighted work as a whole. This factor requires consideration of 1) the proportion of the larger work that is copied and used, and 2) the significance of the copied portion.

4. The effect of the use on the potential market of the copyrighted work. This factor is regarded as the most critical one in determining fair use; and it serves as the basic principle from which the other three factors are derived and to which they are related. If the reproduction of a copyrighted work reduces the potential market and sales and, therefore, the potential profits of the copyright owner, that use is unlikely to be found a fair use.

Principle 4: Nonprofit educational purposes are generally favored in the application of the four factors of fair use, but an educational use does not by itself make the use a "fair use." One must always consider and weigh all four factors of fair use together. The educational purpose of Wellesley College will usually weight the first of the four factors, the purpose or character of the use, in favor of fair use. However, an educational use does not mean that the use is, by that factor alone, a fair use. All four factors must be weighed in making a decision.

4.4 Copying Materials for Instructional Use

Under certain conditions specified in copyright law, a photocopy or other reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a photocopy or reproduction for purposes in excess of "fair use", that user may be liable for copyright infringement.

Primary and secondary school educators have, with publishers, developed guidelines which allow an instructor to distribute photocopied materials to students in a class, without the publisher's prior permission, upon compliance with these conditions:

- The distribution of the same photocopied materials does not occur every semester.
 - Only one copy is distributed for each student, which must become the student's property.
 - The materials include a copyright notice on the first page of the portion of material photocopied.
 - The students are not assessed any fee beyond the actual cost of the photocopying.
 - The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course.
 - The effect of copying the material should not be detrimental to the market for the work.
- In general, the library should own at least one copy of the work.

General Guidelines for Print and Electronic Reserve

- One chapter from a book.
- One article from a journal issue or newspaper.
- Multiple excerpts from a single book or journal issue will be accepted only if the total length of the submission is 10% or less of the total length of the book or journal issue.
- A short story, short essay, or short poem.
- A chart, diagram, drawing, graph, cartoon, or picture.

Materials in excess of Fair Use may still be used with appropriate permission and/or fees to the copyright holder. The Copyright Officer facilitates this process.

4.5 Displaying Media on Campus

Users must secure public performance rights prior to showing a copyrighted work on campus, unless the work was purchased with public performance rights attached. The only exemption to this requirement is for classroom showings.

Classroom Showing

Classroom use or showing of a copyrighted video (VHS, DVD, Blu-ray) is permissible under the following conditions:

- The use must be by instructors or by students.
- The use is part of the curriculum for a specific course and is confined to members in a discrete course or other teaching activity.
- The entire audience is involved with the teaching activity.
- The showing takes place in a classroom or other instructional venue.
- The video is lawfully made; the person responsible has no reason to believe that the video was not lawfully made.

Public Performance

Unless a film has public performance rights attached, it should be assumed that permission is required for a public screening of the film. Public performance rights must be obtained prior to scheduling, advertising or showing a copyrighted film.

If the film is being shown for entertainment purposes, if it includes viewers not enrolled in the course showing the film, or if the film is advertised, it is considered a public (open) showing. The screening of the film is not excused from the "public" designation just because it is an "educational" film, it is being advertised only on campus, or admission is not being charged. The licensing status of the film or work should be determined prior to any advertisement. If it is determined that a public performance license is required, the Wellesley College Copyright Officer will assist in identifying who to contact for permission. The person showing the film is responsible for securing permission and paying any performance fees. See the Wellesley College "Film Showing Guide" for more information above public screenings.

Off-Air Recording

- Off-air broadcasts may be recorded and legally shown once to a single class within the first ten days after the date of the broadcast. This does not allow for multiple showings or general showings within Wellesley College.
- The recording must be from a commercial broadcast (no premium cable channels).
- After ten days the recording may not be shown unless copyright clearance is obtained.
- The professor may retain the recording for an additional 35 days for personal evaluation purposes only. After that time the recording must be erased or copyright clearance obtained.

4.6 Using Multimedia Materials

The use of multimedia materials is governed by the Fair Use Guidelines cited above.

Existing Video Footage

Faculty and students are permitted to copy portions of video materials for the purpose of incorporating the clips into a new production for educational use in the classroom, without obtaining permission from the copyright holder.

The borrowed material may not constitute more than 3 minutes of the original work, nor may it comprise the majority of the finished product. The opening screen of the project and any accompanying print material must include a notice that certain materials have been used under the fair use exemption of the U.S. Copyright Law.

The [Digital Millennium Copyright Act \(DMCA\) of 1998](#) specifically addressed digital media, including DVDs, and introduced new restrictions on copying. Section 1201 of the DMCA prohibits the circumvention of encryption on all digital media. It is a violation of the DMCA, for example, to make a digital copy of an encrypted DVD, because doing so would require breaking the copy protection. In November 2006, several [exemptions to the DMCA restrictions](#) were approved. One of the new exemptions is for multimedia works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.

Guidelines for Using Multimedia Sources

Existing multimedia (music, lyrics, music videos, motion media, photographs, and illustrations) can be incorporated into a student or faculty multimedia project. The amount of the copyrighted work that a student may use in her/his educational multimedia project is restricted by specific portion limitations (see below). In particular, the portion limitations relate to the amount of copyrighted work that can reasonably be used in educational multimedia projects regardless of the original medium from which the copyrighted works are taken. Only two copies of the student educational multimedia project may be made, for reserve and preservation purposes.

Attribution and acknowledgement are required. Students must credit the sources of the copyrighted works, display copyright notice and ownership information, and include notice of use restrictions.

- Copyrighted Music, Lyrics, and Music Videos: up to 10%, but in no event more than 30 seconds.
- Motion Media Work: no more than 3 minutes.
- Photographs and Illustrations: no more than 5 images by an artist or photographer. For photographs or illustrations from a published collective work, no more than 10% or 15 images, whichever is less.

4.7 Digital Millennium Copyright Act

The Digital Millennium Copyright Act (DMCA) provides an opportunity for internet service providers (ISP's) to shield themselves from liability for the actions of their users that infringe on the copyrights of others. All institutions of higher education that provide Internet access fall

within the scope of the definition of an ISP, with relevant users being their students, faculty and staff.

As an ISP, the College is potentially liable for monetary damages (plus attorneys' fees) if any of its users provide Internet access to material that infringes on the copyrights of others. The same is true if, for example, a user transmits infringing materials in an e-mail message. Copyright owners are entitled to recover either their "actual" damages, or statutory damages that range as high as \$30,000 per work infringed. (In the case of willful infringement, the statutory damages can be as high as \$150,000 per work.) In all cases, the "fair-use" exemption that allows use of copyrighted materials in narrowly defined circumstances applies to materials in digital form just as it applies to traditional media.

Wellesley College DMCA Procedures

The DMCA does not require that Wellesley College "police" the Internet activities of its faculty, staff or students. Rather, it requires that the College respond in specified ways to avoid institutional liability when evidence of infringing activity is brought to its attention or when it receives information that makes it apparent that infringing activity is occurring.

When the College receives a takedown notice, pre-settlement letter or settlement letter from an agent (the RIAA, MPAA or other agent) or the copyright holder, the College follows the procedures outlined below:

- When the College receives a notice of claimed infringement, the College will investigate who is attached to the network address given in the notice. Following receipt of a proper notification, the College must "expeditiously" remove ("take down") the infringing material or block access to it. Wellesley College shuts down the identified user's access to the Wellesley College network.
- The College must "promptly" notify the user of the College's action. Such notification coupled with the removal of the material shields the College from liability for damages sought for the actions of the user. A member of Library & Technology Services (LTS) will contact the person in question via email to meet with him or her. At this meeting, both the identified file(s) and the file-sharing software will be removed by the LTS staff member. After this meeting, network access is re-established.
- The person receiving the notice must also meet with the College Copyright Officer and sign a statement acknowledging receipt of the notice and understanding that receipt of

a second notice will trigger notification to appropriate college officials to determine what sanctions may be issued.

- In the case of pre-settlement or settlement letters, it is the user's responsibility to determine whether or not to respond to the settlement offer.
- Upon receipt of a second notice the College will follow all of the above procedures, and the individual will be required to additionally meet with the Chief Information Officer (CIO).
- If the individual receives a third notice, the CIO will bring an honor code charge against the individual for disciplinary action.
- In cases where a user disputes the accuracy of a claimed infringement, the user may provide a signed, written counter notification (made under the penalty of perjury) to the College's designated agent that includes the name, address and phone number of the user. The counter notification must identify the material that was removed and the location at which it appeared before removal, state that the material was erroneously removed because the copyright owner is either mistaken or the use of the material is lawful, consent to the jurisdiction of the Federal District Court for the District of Massachusetts, and affirm that the user will accept service of process from the person providing notification.
- At this point, the College must "promptly" notify the copyright owner and restore the material no less than 10 business days and no more than 14 business days after the owner is notified of the counter notification, unless the College first receives notice from the copyright owner that he or she has filed an action seeking a court order to restrain the user.

The above procedures only apply to Wellesley College faculty, staff and students. When the College receives a DMCA notification about a computer on our network that is not connected with a member of the Wellesley College community, the CIO will determine the appropriate course of action.

DMCA Agent and Copyright Officer for Wellesley College

Graham Henderson, Collections Management Librarian and College Copyright Officer

Margaret Clapp Library

Wellesley College

106 Central Street

Wellesley, MA 02481-8203

Send DMCA notices to the Wellesley College DMCA Agent

5.0 Enforcement and Penalties for Infringement

Substantial penalties can be imposed for infringement of a copyright. An injunction to stop the infringement is most likely to be the first action. Payment of actual damages for financial loss suffered by the copyright owner may be required. Statutory damages, for which no actual damages need be proved, may be assessed. If the court determines there is an infringement, it may award damages between \$750 and \$30,000. If the court determines that the infringement was willful, the penalty may be as high as \$150,000 per item. In addition, Wellesley College reserves the right to enforce violations of this policy. Failure to comply may result in suspension or termination of network services, appropriate disciplinary action, termination in the case of employees or expulsion in the case of students.

6.0 Effective Date

This policy was approved by the Advisory Committee on Library and Technology Policy on 11/7/2011. It was revised on 9/10/14, and 9/23/15.