

Copyright Policy

Policy Name: Copyright Policy

Approval Authority: Cabinet

Interpreting and Implementing Authority: Director of Library Services

Effective: September 1, 2021

Last Revised: September 1, 2021

Next Review Date: 5 years from last revised date

Policy Statement

As a liberal arts institution of higher learning, Wesleyan College has a responsibility towards the recognition and use of copyrighted works. We are cognizant of the importance of balancing the intellectual property rights of authors to control the dissemination and use of their works, against the need for teaching, learning, and scholarship for educational purposes.

[Title 17 of the United States Code](#) of the Copyright Law is the legal protection that provides authors of original creative works with limited control over the reproduction and distribution of their work. Under the current law, copyright protection is automatic and begins the moment any “original work of authorship is fixed in a tangible medium of expression.” Copyright is intended to “promote the Progress of Science and useful Arts.”

The Copyright Act gives copyright holders a set of exclusive rights to

- Reproduce their work, in whole or in part;
- Distribute copies of their work;
- Publicly perform their work;
- Publicly display their work;
- Prepare derivative works based on the original, such as translations or adaptations.

Entities Affected by the Policy

All Wesleyan College faculty, staff, and students will be governed by this policy.

Policy Details

I. Policy on the Use of Copyrighted Works for Education and Research

Wesleyan College will take appropriate measures to ensure that its students, faculty, and staff are aware of [Federal Copyright Laws](#), regulations, and agreements. All members of the Wesleyan College community are required to comply with copyright laws and respect the rights of authors of original works. A statement about copyrighted works should be included on the syllabus for each class. Students will receive an annual copyright notification (see Appendix B) sent by the Director of Willet Library.

II. Copyright Protections and Fair Use Principles

Copyright law protects original works such as writings, music, visual arts, and films by giving the copyright holder a

set of exclusive rights to that work. The 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, unless the use falls within an exemption of the law, such as the fair use exemption.

Wesleyan College community members must make demonstrable good faith efforts to understand the fundamentals of copyright law and the reasonable application of fair use. Community members must weigh their use of copyrighted materials in their teaching or research by examining the specifics of their use within the context of the law and seek permission if it is not covered by the four factors of fair use.

Fair Use is a doctrine that allows use of copyrighted material without permission if it meets certain criteria. While the idea of fair use seems simple, it can actually be very complicated. Fair use depends on a case-by-case application and balancing of the four factors as set forth in the law. Four factors must be weighed when determining if use is fair:

- Purpose and character of use
- Nature of the copyrighted work
- Amount or substantiality of the portion used
- Effect of the use on the market for, or value of, the work

All four Fair Use factors must be weighed when making a decision about copyright. While the nonprofit educational mission of Wesleyan College will usually weigh in favor of Fair Use in terms of the purpose and character of use, educational use does not necessarily mean that the use is a fair use. To determine Fair Use, the Wesleyan College Fair Use Checklist (Appendix A) should be filled in to document community members' reasonable and good-faith efforts to determine if their activities are Fair Use in light of the four factors. By documenting their application of the four factors to their use of copyrighted material, community members will be better able to demonstrate that their activities were done in good faith, which may limit their potential liability. Completed checklists should be

COPYRIGHTABLE WORKS

- **Literary Works**
- **Musical Works including any accompanying words**
- **Dramatic Works including any accompanying music**
- **Pictorial, graphic, and sculptural works**
- **Pantomime and Choreographical Works**
- **Motion Pictures and other A/V works**
- **Sounds Recordings**
- **Architectural Works**
- **Computer Programs**
- **Compilations and Derivative Works**

From: United States Copyright Office (2019). Copyright basics (Circular No. 1). Retrieved from <https://www.copyright.gov/circs/circ01.pdf>

NOT COVERED BY COPYRIGHT

- **Works not fixed in a tangible form (i.e. spontaneous performances, speeches, musical or choreographical work that has not been recorded)**
- **Names, titles, short phrases, slogans, list of ingredients or contents, familiar symbols or designs, typography, coloring or lettering.**
- **Ideas, procedures, methods, systems, processes, concepts, principles, discoveries, or devices, as distinguished from a description, explanation or illustration**
- **Works consisting entirely of information that is common property containing no original authorship (i.e. calendars, height/weight charts, tape measures/rulers)**

From: United States Copyright Office (2019). Works not protected by copyright. (Circular No. 33). Retrieved from <https://www.copyright.gov/circs/circ33.pdf>

submitted to the Library Director. Works covered and not covered by copy right are listed below.

III. How to Obtain Copyright Permission

Each faculty member is responsible for obtaining copyright permissions for use in instructional classrooms or online learning experiences, for posting on College LMS course sites, or for individual research. The College recommends requesting permission at least six weeks in advance of needing to use the work since the approval process can be slow. For assistance identifying or locating copyright holders, contact a librarian (or appropriate staff member).

No community members, including departments, faculty/staff or student groups may not host a public showing of copyrighted movies or shows outside of the instructional classroom and/or not for educational purposes without having copyright permission. Even if you have a legally purchased physical copy of the movie and do not charge admission, you will still need to have a license purchased prior to screening the film. Copyright law and the terms and conditions for streaming prohibit the use of individual streaming accounts for group viewings. Student groups should contact the Director of Student Leadership and Involvement for approval to show movies or shows outside the instructional classroom.

Music is also copyrighted and may not be used in a video to promote an event unless the song is no longer undercopyright or you have received permission from the copyright holder to use the song. Some songs may be available for use through licensing from [BMI](#) and [ASCAP](#).

Violations of the Policy

Wesleyan College community members who fail to comply with copyright laws or fail to act in good faith using the Fair Use doctrine will assume liability for their own actions. This failure to comply may result in disciplinary action.

Interpreting and Implementing Authority

Director of Willet Library

Wesleyan College, Willet Library is grateful to Agnes Scott College McCain Library for the framework and some of the language used in creating this policy. Used with permission from Agnes Scott College.

Appendix A
FAIR USE CHECKLIST

Name: _____

Project/Class: _____

Date: _____

Prepared by: _____

Introduction to the Checklist

The Fair Use Checklist and variations on it have been widely used for many years to help educators, librarians, lawyers, and many other users of copyrighted works determine whether their activities are within the limits of fair use under U.S. copyright law (Section 107 of the U.S. Copyright Act). The four factors form the structure of this checklist. Congress and courts have offered some insight into the specific meaning of the factors, and those interpretations are reflected in the details of this form.

Benefits of Using the Checklist

A proper use of this checklist should serve two purposes. First, it should help you to focus on factual circumstances that are important in your evaluation of fair use. The meaning and scope of fair use depends on the particular facts of a given situation, and changing one or more facts may alter the analysis. Second, the checklist can provide an important mechanism to document your decision-making process. Maintaining a record of your fair use analysis can be critical for establishing good faith; consider adding to the checklist the current date and notes about your project. Keep completed checklists on file for future reference.

The Checklist as a Roadmap

As you use the checklist, you are likely to check more than one box in each column and even check boxes across columns. Some checked boxes will favor fair use and others may oppose fair use. A key issue is whether you are acting reasonably in checking any given box, with the ultimate question being whether the cumulative weight of the factors favors or turns you away from fair use. This is not an exercise in simply checking and counting boxes. Instead, you need to consider the relative persuasive strength of the circumstances and if the overall conditions lean most convincingly for or against fair use. Because you are most familiar with your project, you are probably best positioned to evaluate the facts and make the decision.

Caveat

This checklist is provided as a tool to assist you when undertaking a fair use analysis. The four factors listed in the Copyright Statute are only guidelines for making a determination as to whether a use is fair. Each factor should be given careful consideration in analyzing any specific use. There is no magic formula; an arithmetic approach to the application of the four factors should not be used. Depending on the specific facts of a case, it is possible that even if three of the factors would tend to favor a fair use finding, the fourth factor may be the most important one in that particular case, leading to a conclusion that the use may not be considered fair.

PURPOSE

Favoring Fair Use

- The use is for the purpose of teaching in a non-profit educational institution (including multiple classroom copies).
- Criticism, comment, news reporting, or parody or transforms the presentation or use.
- The use is necessary to achieve an intended educational purpose.
- Access restricted to students enrolled in course

Opposing Fair Use

- The use is for commercial purposes.
- The use is non-transformative, verbatim/exact copy without criticism, comment, news reporting, or parody or transformation of presentation or use.
- The use is not necessary to achieve an intended educational purpose.
- Distribution is not limited or controlled.

NATURE

Favoring Fair Use

- The work is published.
- The work is non-fictional or factual in nature and the author's voice does not dominate the work.
- The work is a "non-consumable" (published book or similar).
- Essential for learning objectives

Opposing Fair Use

- The work is unpublished.
- The work is non-fictional in nature and, author's voice dominates the work.
- The work is a consumable work (workbook or test).
- The work is highly creative work (art, music, novels, films, plays).

AMOUNT

Favoring Fair Use

- A small amount of the work is used (e.g. a single article, a chapter, or other excerpt less than 10% of the work taking into consideration the nature of the total work.)
- Portion used is not central to entire work as a whole
- Amount is appropriate to education purpose

Opposing Fair Use

- Large portion or entire work
- Portion used is central or the "heart" of the work
- Includes more than necessary for education purposes

EFFECT ON THE MARKET

Favoring Fair Use

- User owns lawfully purchased or acquired copy of original work
- One or few copies made/distributed
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Numerous copies made
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available and affordable licensing/permission mechanism available
- It was made accessible via the Web or other public forum
- Repeated or long-term use

The Checklist and the preceding introduction is licensed by a Creative Commons Attribution License with attribution to the original creators of the checklist Kenneth D. Crews (formerly of Columbia University) and Dwayne K. Buttler (University of Louisville). [Creative Commons License](#).

Appendix B

Copyright Notification and Summary of Penalties

Wesleyan College is required under the Higher Education Opportunity Act (HEOA) to make an annual disclosure informing students that illegal distribution of copyrighted materials may lead to civil and/or criminal penalties.

Wesleyan College strictly prohibits the unauthorized distribution of any copyrighted material, including peer-to-peer file sharing and illegal downloading. The College's Copyright Policy and the Student Code of Conduct both prohibit the use of the College's technology resources to violate copyright law. Use of the College's technology resources is a privilege granted by the College and may be revoked at any time for inappropriate conduct carried out on such systems, including, but not limited to:

- Making unauthorized copies of software or third party files, or otherwise violating software licensing agreements or copyright laws;
- Using peer-to-peer applications that violate content copyright.

Violations of these policies may result in loss of computer privileges and/or disciplinary action under the Student Code of Conduct and/or employee disciplinary action up to and including discharge of employment. In addition, the user may face both civil and criminal liability from the College, from law enforcement officials or from individuals whose rights are harmed by the violation.

Students and prospective students may review the College's Copyright Policy online. Further information may be obtained upon request to the Director of Willet Library.

Civil and Federal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

For more information, please see the [U.S. Copyright Office](#) website, especially their [FAQ's](#) section.