

Linfield Libraries Copyright Policy

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I. Introduction

The libraries at Linfield College adhere to, and seek to positively promote, observance of U.S. Copyright Law. To that end, we provide the following guidelines and principles to help members of the Linfield community comply with the law.

U.S. Copyright Law – laid out in [Title 17 of the United States Code](#) – ensures certain exclusive rights to the creators and rights holders of tangible works of expression for the purposes of promoting “the Progress of science and useful arts” (U.S. Const. art I, Sec. 8). With some exceptions, rights holders are given the sole right, for a limited period of time, to distribute, reproduce, perform and display their works, and to prepare derivatives, such as translations, adaptations, and sequels, from their works. These activities are often colloquially referred to as “uses” of copyrighted work.

The law also provides users of copyrighted material with certain rights. Understanding the rights of both creators and users of copyrighted material is vital to making smart, ethical, and legal copyright decisions. It is also vital to both academic and educational work, which rely so much on the study of the works of others in an effort to increase and support learning and general knowledge.

Please note that the following principles are meant to be educational, and should not be construed as constituting legal opinion or advice. For legal advice regarding copyright or a specific use of copyrighted materials, you should always consult a lawyer.

a. Structure

The structure of this document follows the Framework For Analyzing Any Copyright Problem, authored by Kevin J. Smith and Lisa Macklin, and made available via the open online course, “[Copyright for Educators & Librarians](#).” This framework, consisting of five questions, leads the person using it through a process of thinking about their rights regarding the use of a particular work.

The five questions of the framework, in the order they should be asked, are:

1. Is the work protected by copyright?
2. Is there a specific exception in copyright law that covers my use?
3. Is there a license that covers my use?
4. Is my use covered by fair use?
5. Do I need permission from the copyright owner for my use?

b. Contact Information

If you have a question about copyright, or about any aspect of this policy, please contact Patrick Wohlmüt, Linfield’s Teaching and Research Librarian. His email address is pwohlmuet@linfield.edu; his office phone number is 503-883-2262.

II. Copyright Protection

a. Public Domain

Copyright expires after a set period of time, after which a work enters what we call the public domain. Works that are in the public domain are no longer protected by copyright and may be legally used without the permission of the author.

Cornell University provides [a detailed chart](#), authored by Peter B. Hirtle, that provides a nuanced guide to whether or not a work is still protected by copyright. Generally speaking, however, a work is in the public domain if:

- It was published before 1923.
- It was published before 1977 without a copyright notice, or if copyright was not renewed.
- It was created by an employee of the United States government in the execution of their duties.
- It has been released into the public domain, or given a Creative Commons Zero license (see the section on licensing) by its creator.

The current copyright term limit for individually authored, copyrighted works is the life of the author plus 70 years. The current limit for corporate authored works is 95 years from publication or 120 years from creation, whichever comes first.

b. Your Scholarly Work

Since 1989, a copyright notice is not necessary to receive copyright protection for a work, nor is registration with the United States Copyright Office. When you create an original work of any kind, unless it was considered a work-made-for-hire (17 U.S.C. Sec. 201[b]) or you used other copyrighted works illegally in the creation of it, it belongs to you.

That said, when a scholarly author gets their work published, the contract between author and publisher can include clauses that sign away some or all of the author's copyrights. If you have had a piece of your own work published in a journal or other source, and you wish to re-submit or re-publish that work elsewhere, you should look at the contract for the original publication to see what rights you still have to use the work. More information on scholarly publishing can be found at the Linfield libraries' [Open Access & Scholarly Communication LibGuide](#).

c. Electronic or Web-Originated Works

Works that originate on, or are transmitted via, the Internet are subject to copyright law the same as any print work. This includes any kind of information protected within the scope of US Copyright Law (17 U.S.C. Sec. 102). The use of social media, file sharing, or any other Internet application to illegally distribute copyrighted works using Linfield technology is not allowed. Linfield has provided information on [compliance with these laws](#), as well as [acceptable and unacceptable uses of Linfield technology](#), both online and in the student handbook.

III. Exceptions to Copyright Law

a. The Classroom Exception

According to section 110(1) of US Copyright Law, if you are a student or a teacher that wants to perform or display otherwise copyrighted works in the course of teaching and learning, you may freely and legally use those materials provided that you do so:

- during the course of face-to-face instructional activities,
- in a classroom or physical learning space,
- at a non-profit educational institution,
- with material which was lawfully acquired or made.

Note that you are not covered under this exception if the material is shown publicly; it only applies to teaching and learning situations in the classroom. See the section on Public Performance Rights for more information.

b. The TEACH Act

The TEACH (Technology, Education, and Copyright Harmonization) Act, or section 110(2) of US Copyright Law, passed in 2002, amended our copyright laws in order to attempt to extend the Classroom Exception to online learning environments. However, due to the accessible and easily reproducible nature of digital information, it is far more specific and restrictive than the exception for face-to-face classroom use.

The American Library Association maintains [a comprehensive learning page about the TEACH Act](#) that includes more information on the TEACH Act, as well as a list of requirements and rights for instructors wishing to display or perform copyrighted works as part of an online class, as well as for policy makers and IT professionals at institutions that offer distance education. The Linfield libraries recommend using this source to see if your intended display or performance is consistent with the protections of the TEACH Act.

Keep in mind that the TEACH Act does not alter fair use in any way, and the principles of fair use apply both online and face-to-face. If your intended use is not covered under the TEACH Act, it may still fall under fair use.

c. Other Exceptions and Library Policies

i. Copies of Scholarly Material for Purposes of Study – In many cases, faculty and students may make copies of textual works for the purposes of, “private study, scholarship, or research,” (17 U.S.C. Sec. 108). Furthermore, in keeping with Section 107 of US Copyright Law, which details Fair Use, the copy must be, “appropriate in kind and amount, considering the nature of the copyrighted work and of the use” ([Association of Research Libraries, et al](#), 2012, p. 8). This means that no more than the amount that is required for private study, scholarship, or research may be copied for personal use.

Other restrictions include:

- Repetitive copying: The classroom or reserve use of photocopied materials in multiple courses or successive years will normally require advance permission from the owner of the copyright (17 U.S.C. Sec. 107 [3]).
- Copying for profit (17 U.S.C. Sec. 107 [1]).
- Consumable works: The duplication of works that are consumed in the classroom, such as standardized tests, exercises, and workbooks, normally requires permission from the copyright owner (17 U.S.C. Sec. 107 [4]).
- Creation of anthologies as basic text material for a course (Coursepacks): Creation of a collective work or anthology by photocopying a number of copyrighted articles and excerpts to be purchased and used together as the basic text for a course will in most instances require the permission of the copyright owners. Even when not made available for purchase, such copying is more likely to be considered as a substitute for purchase of a book and thus less likely to be deemed fair use (17 U.S.C. Sec. 107[4]).

There are often ways to avoid these restrictions that enable you to use the material you need for teaching or learning without infringing on another person's copyrights. If you have questions, please contact Patrick Wohlmüt, Linfield's Teaching and Research Librarian, at pwohlmuet@linfield.edu.

ii. Interlibrary Loan – The Linfield libraries comply with the American Library Association [interlibrary loan code](#). We make every effort to obtain materials requested by patrons, whether through borrowing the materials from other libraries or paying to obtain them from vendors or other sources. Where copyright restrictions apply, the libraries will work with patrons to legally acquire the material. For more information on Interlibrary Loan policies, contact Rich Schmidt, Linfield libraries' Director of Resource Sharing, at rschmidt@linfield.edu.

iii. Reserves – At the request of a faculty member, the libraries may place on reserve excerpts from copyrighted works in accordance with guidelines similar to those governing formal classroom distribution for face to face teaching discussed above. The libraries believe that these guidelines apply to the library reserve shelf to the extent that it functions as an extension of classroom readings or reflects an individual student's right to copy for their personal scholastic use under the doctrine of fair use. In general, faculty and librarians may copy materials for reserve use for the convenience of students both in preparing class assignments and in pursuing informal educational activities that higher education requires, such as advanced independent study and research.

If the request calls for only one copy to be placed on reserve, an entire article, an entire chapter from a book, or an entire poem may be copied. Requests for multiple copies on reserve should meet the following guidelines:

1. The amount of material should be reasonable in relation to the total amount of material assigned for one term of a course taking into account the nature of the course, its subject matter and level (17 U.S.C. Sec. 107 [1] and [3]);

2. The number of copies should be reasonable in light of the number of students enrolled, the difficulty and timing of assignments, and the number of other courses which may assign the same material (17 U.S.C. Sec. 107 [1] and [3]);
3. The material should contain a notice of copyright (17 U.S.C. Sec. 401); and
4. 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.) (17 U.S.C. Sec. 107 [4].)

IV. Licensing

[Nolo's Plain-English Law Dictionary](#) defines a license as either a “permission to do something otherwise prohibited by law,” or “A contract giving written permission, for a limited time, to someone to exploit an invention, creative work, or trademark.”

a. Creative Commons

Often, one has to pay for a license, though not always. There are services on the Internet that allow one to download and use otherwise copyrighted materials, such as images and music, for free, so long as you attribute the author in the way they specify and follow their wishes regarding the use of that work. These works are often shared under what is called a Creative Commons license.

Creative Commons is a non-profit organization that offers alternatives to traditional copyright law. In response to the open access movement, Creative Commons developed six licenses that make it easier for people to share their knowledge and creative work. The result is, ideally, to build a richer environment in which people can share and reuse creative works, both their own and those of others.

Creative Commons licensed material can be used more freely, often without obtaining the author's permission – though authors will often provide clear contact information when they desire permission to be asked. The alternative licensing system also helps authors manage and share their copyrights.

The [Creative Commons website](#) includes more information on the project and on the six licenses that are offered to content creators, and provides a list of online resources where one can find and use Creative Commons licensed material.

b. Public Performance Rights

Section 101 of U.S. Copyright Law defines a public performance as one that is, “open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered,” or that is transmitted “by means of any device or process” that allows the public to see or hear it (17 U.S.C. Sec. 101). The Classroom Exception allows for performances of materials in the context of face-to-face teaching and learning, but outside of that context, unless the performance can be considered a fair use, you must [secure a license](#) for any public performance of a copyrighted work.

Nicholson Library carries some movies in its collection for which Linfield already has public performance rights. If you are uncertain whether or not Linfield has public performance rights for a movie in our library collections or are interested in us obtaining public performance rights for a movie in our collections, please contact Kathleen Spring, our Collections Management Librarian, at kspring@linfield.edu.

For more information on public performances of movies and other media, obtaining streaming

access to movies not in our collections, or obtaining one-time public performance rights for a movie showing, check out Linfield's [Movie Viewing information page](#), or contact Educational Media Services at ems@linfield.edu.

c. Your Scholarly Work - Redux

In order for anybody else to publish, perform, or disseminate your work, they need either your permission or a license to do so. One context in which this may occur at Linfield is if you decide to make your scholarly work available, either physically or electronically, in the [Linfield College Archives](#), or through [DigitalCommons@Linfield](#), Linfield College's open access institutional repository.

[Information about thesis binding](#) is available at the libraries' [Collections Management page](#). If you have questions about having a thesis printed and archived or having your scholarly work included in our online repository, please contact [Kathleen Spring](#). For questions regarding the Archives, please contact [Rich Schmidt](#).

V. Fair Use

A fair use of otherwise copyrighted material is one that is made, “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research” (17 U.S.C. Sec. 107). In determining whether a proposed use of copyrighted material is a fair use or not, one must conduct a four factor analysis. Those four factors are:

1. “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. “the nature of the copyrighted work;
3. “the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. “the effect of the use upon the potential market for or value of the copyrighted work” (17 U.S.C. Sec. 107).

Uses determined to be fair are considered not to be infringements of copyright.

Another, more informal test of whether a use is fair is transformative use: one that takes a portion of an original work and changes it or places it into a different context in order to create an entirely new work. [Smith and Macklin](#) recommend using three criteria to determine whether a transformative use might be fair: whether the copyrighted material helps you to make a new point, whether it will help your audience to understand your point, and whether you’ve used only that amount that helps you to make your point.

Determining whether a use is truly a fair one can be tricky. Kenneth Crews and Dwayne Butler have created [a checklist](#), hosted by Columbia University Libraries, that can help you determine whether or not your intended use of material is a fair one. If you wish to determine whether a proposed use is a fair one but do not have experience applying a fair use analysis, and you do not wish to use the Fair Use Checklist, please contact [Patrick Wohlmüt](#).

a. Caveat to Fair Use: Digital Displays of Presentations

Both Fair Use and Section 110’s Classroom Exception allow for presentations of certain material in the context of face-to-face instruction, and fair use can protect you if you are giving a public, scholarly presentation that includes excerpts from other, copyrighted works. However, because of the increase in potential audience and the possibility of copying and re-recording, those protections can disappear once you post video of your presentation to the Internet. Whether you are an instructor or a student, if your presentation includes copyrighted material, take a look at it before posting it to the Web to make sure that either those excerpts pass a fair use analysis, or that they are excised or made unintelligible in the recording. If you don’t, you could be made liable for copyright infringement.

VI. Seeking Permission From Copyright Holders

If a work that you wish to use is currently under copyright, and you have exhausted your other options – your use is not covered under any of the legal exceptions to copyright, there is no license under which you can use the material, and fair use does not apply – then you will have to seek permission from the copyright holder before using the work.

The first step is to identify who holds the copyright. The best place to start in identifying who holds copyright in a work is to contact the publisher, producer of a video or audio work, or distributor of another kind of work. They often have information about who holds the copyright to material you'd like to use.

Once you've identified the rights holder, the second step is to contact them and ask permission. Be as specific as possible about the way in which you want to use their work, including: the period of time for which you need to use it, the manner in which you intend to use it, whether or not you expect to see any profit or money from the use, and any subsequent uses you may wish to implement. Also, bear in mind that occasionally, you may not receive a response from the rights holder. No response does not indicate permission to use the work.

Finally, if the rights holder agrees to give you a license or permission to use the work in question, then step three would be to secure the permission or agreement from the rights holder in writing and keep both a hard copy and an electronic copy. You want to have this on hand in case anybody has questions about your right to use the work. The book, [*Copyright Law For Librarians And Educators, Third Edition*](#), by Kenneth D. Crews (2012, available for check out at Nicholson Library) gives further advice on this process.

VII. Acknowledgements

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