**Western New Mexico University**

**Draft Copyright Policy & Guidelines**

***Compliance Officer***

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**Copyright Policy and Guidelines**

Copyright is the right of the creator of a work to control the use of that work by others. Copyright protects literary works, musical works, dramatic works, pantomimes and choreographic works, pictorial works, graphic works, sculpture, motion pictures and other audiovisual works, as well as sounds recordings and architectural works. In other words, copyrighted work may not be reproduced by others without the copyright owner’s permission.

Although there are some exceptions to the rules, i.e. fair use, discussed later, generally the unauthorized reproduction, performance, or distribution of a copyrighted work is copyright infringement and may subject the guilty party to civil and criminal penalties.

Western New Mexico University (WNMU), its faculty, students, and employees must comply with the Copyright Law. Questions regarding copyright law compliance should be directed to your department head, your professor, your supervisor, or the University Librarian and copyright compliance officer. Additional information about copyright is available on the following web sites:

* [United States Copyright Office “Copyright Basis”](http://www.copyright.gov/legislation/)
* [University of Texas “Crash Course” in Copyright](http://www.utsystem.edu/ogc/intellectualproperty/teachact.htm)

**Fair Use**

Fair Use is a copyright law that permits the reproduction or use of copyrighted material, without the owner’s permission, for purposes of criticism, commentary, news reporting, teaching and research. Fair Use is based on a set of general guidelines that are meant to be interpreted on a case-by-case basis. Courts consider four factors in disputes over Fair Use.

**Determining Fair Use**

* The purpose and the character of the use, including whether it is for commercial or non-profit educational purposes
* The nature or type of the copyrighted material (i.e., periodical, film, book, etc.)
* The amount and substantiality of the portion used in relation to the whole
* The effect of the use on the potential market for or value of the copyrighted material

**File Sharing and Copyright Law**

Western New Mexico University, like all institutions of higher education, is devoted to creating, discovering, and sharing knowledge and information. WNMU is also committed to taking reasonable steps to avoid misuse of its computer network, including use of the computer network to violate the Copyright Law of the United States.

The Digital Millennium Copyright Act & Peer-To-Peer File Sharing (DMCA) provides limited protection for Internet Service Providers (ISP), such as WNMU, from the infringing acts of their users. To obtain safe harbor, WNMU must comply with the DMCA, including responding to copyright infringement complaints and having a procedure to terminate repeat copyright infringers from the ISP.

**File-Sharing under the DMCA**. The use of file-sharing networks to download and share copyrighted works without permission from the copyright owner -- like software, music, movies, TV shows, games, and images -- violates copyright laws. Both the person who makes an illegal copy of a copyrighted work available and the person who receives or downloads an illegal copy have violated copyright laws and WNMU policies. Under the DMCA, a copyright owner or an authorized agent may lawfully scan Internet traffic and send a complaint to WNMU as the ISP. If the copyright owner chooses to follow-up with civil litigation, it may file a "John Doe" lawsuit against the IP address, and WNMU would have to provide the identity of the WNMU network user in response to a valid subpoena. Copyright violations can result in penalties of up to $150,000 per violation. In February of 2007, the Recording Industry Association of America began a campaign of sending out "Early Settlement Notices" to university students throughout the country.   Under this program, if students are not willing to settle file-sharing violations with the Recording Artists for several thousands of dollars, then a lawsuit against the student is filed.

**WNMU's Copyright Complaint Policy for Students:** Upon receipt of a DMCA copyright complaint that may identify a student, a copy of the complaint will be sent to Information Technology. IT will make a best effort to identify the student (or students) who is the subject of the complaint. If IT cannot identify the subject of the complaint, IT will provide a response describing WNMU’s anti-piracy efforts.

If IT can identify the student who is the subject of the complaint, IT will provide that identity to the Vice President for Student Affairs (VPSA).

The VPSA will present the DMCA complaint to the identified student. If this is the first complaint about the student, the student must respond to the complaint within the timeframe stated in the complaint. If the student does not respond within that time, the student’s Internet connection will be terminated and the student may be charged a $100 fee to be reconnected to the Internet. A representative of the VPSA will speak with the student and obtain a signed copy of the WNMU Acceptable Use policy. Additional disciplinary action may be taken at this time.

If this is the second DMCA complaint about a student, the student’s Internet connection will be terminated immediately. The student may be charged $500 to be reconnected to the Internet. The VPSA will speak to the student and will obtain a signed commitment not to violate copyright law. Additional disciplinary action may be taken at this time.

If this is a student’s third DMCA complaint, the student’s Internet connection will be terminated immediately. The matter may be referred to law enforcement authorities, and the student may be charged up to $1,000 to obtain new Internet privileges. Additional disciplinary action may be taken at this time.

**Guidelines for Online Use of Course Materials**

The following serves as guidance to instructors, librarians, and support staff concerning the circumstances under which they may, consistent with the Copyright Law, place course materials on electronic reserves or on course web sites.

## 1. Instructor Authored Materials

Instructors may post their own authored materials, such as lecture notes, tests, exercises, problem sets, and PowerPoint presentations. (Instructors should bear in mind that if material they have authored has been published (e.g., in a journal), they may have transferred the copyright to the publisher. In that case, it will be necessary to either

* obtain permission from the publisher to post the material, or
* follow the Online Guidelines in Section 4, below.)

## 2. Materials for which WNMU Already Holds Permission

Materials drawn from WNMU’s licensed (Library) collections may be included in electronic reserves and course web sites without any further permission by linking to secured URL controlled by password protection.

## 3. Material Unprotected by the Copyright Act

The following categories of material are not protected by the Copyright Act and may therefore, be made available on electronic reserves or on course web sites without the permission of the copyright owner:

* Material that has entered the public domain because the copyright has expired. The rules for determining whether a work has entered the public domain are complicated but are set out in [chart form](http://www.unc.edu/~unclng/public-d.htm) as prepared by Lolly Gassaway of the University of North Carolina.
* Works of the United States Government. By statute, U.S. Government works are not protected by copyright.
* Links to web sites. Anyone may freely reproduce the address of a web site to which readers may "hyperlink." Best practices suggest proper citation and notifying the web page provider.

## 4. Material Made Available Under the Online Guidelines

Material that does not fall within the categories described above may still be used in electronic reserves or course web sites under the following conditions:

### A. Written Works

By meeting the following guidelines, written works (such as text works and musical scores) may be placed on electronic reserves or on course web sites for use in connection with course instruction:

1. The instructor is placing the work on electronic reserves or on a course web site for the first time. If this is the second or subsequent term that the instructor seeks to place the work online, permission must be secured from the copyright holder.

2. The work does not exceed the following quantity limitations:

* One chapter of a book.
* One article from a periodical or newspaper.
* One short story, short essay, or short poem.
* One chart, graph, diagram, cartoon or picture from a book, periodical, or newspaper.
* Up to 10% of a musical score.

3. A commercially available copy of the written work is owned by or licensed to WNMU, or WNMU has ordered a commercially available copy of the written work, or the written work is owned by the course instructor, and WNMU has made a good faith effort to purchase a commercially available copy.

4. The materials are required readings for the course.

5. Online access to course materials shall be limited through authentication (login) to class participants.

6. Access to the files shall be disabled at the completion of the course.

7. Course files may be stored for future re-use as long as permission is obtained from the copyright holder to post the material in second or subsequent terms.

### B. Audio Recordings

By meeting the following guidelines, audio recordings of musical works may be placed on electronic reserves or on course web sites for use in connection with course instruction:

1. A commercially available copy of the audio recording is owned by or licensed to WNMU, or WNMU has ordered a commercially available copy of the audio recording, or a lawfully obtained copy of the audio recording is owned by the course instructor and WNMU has made a good faith effort to purchase a commercially available copy.

2. Entire works shall be made available only of works that are being taught in the course and that are assigned to students for a specific class meeting. The number of entire works that may be digitized during an academic term shall not exceed the maximum number of works typically required for the course: approximately 30 hours. Excerpts, not entire copies, should be used when possible.

3. Online access to course materials shall be limited through authentication (login) to class participants. Audio must be delivered in streaming format.

4. Access to the files shall be disabled at the completion of the course, but the files may be stored for future re-use in accordance with these guidelines.

### C. Video/DVD Recordings

By meeting the following guidelines, video/DVD recordings may be placed on electronic reserves or on course web sites for use in connection with course instruction:

1. A commercially available copy of the video/DVD is owned by or licensed to WNMU, or WNMU has ordered a commercially available copy of the video/DVD, or a lawfully obtained copy of the video/DVD recording is owned by the course instructor, and WNMU has made a good faith effort to purchase a commercially available copy.

2. Entire works shall be made available **only** of works that are being taught in the course and that are assigned to students for a specific class meeting. Excerpts, not entire copies, should be used when possible. Since our system will support only short 30 second to 2 minutes of video, use of entire works is prohibited.

3. Online access to course materials shall be limited through authentication (login) to class participants. ***Video must be delivered in streaming format***. No copies can be made on DVDs and mailed to students.

4. Access to the files shall be disabled at the completion of the course, but course files may be stored for future re-use in accordance with these guidelines.

**Compliance Procedures**

To the extent it is technologically feasible, WNMU will limit the transmission of copyrighted material posted on its learning management system platform to persons enrolled in the specific course in which the material is posted. Unless an individual student has been given an extension of a due date for an assignment connected to copyrighted material, instructors will limit access to copyrighted material to the period necessary for students to complete any assignments connected to the copyrighted material.

Unless an individual student has been given an incomplete grade, WNMU will limit access by enrolled students to copyrighted material to the calendar period that the course is in session. Generally, this will be the length of a regular semester or summer session unless the course is in session for a different calendar period.

All instructors will post a notice in the syllabus of an on-line course stating: *“The materials found in this course are only for the use of students enrolled in this course for purposes associated with this course and may not be retained by students in any electronic form or further disseminated or distributed to anyone not enrolled in this course.”*

Instructional Designers will monitor courses for copyright violations. If a violation of the law is observed, the instructor will be notified that the material in violation must be removed from the course. Should an instructor dispute whether the material is in fact a violation of the law, the matter shall be referred to the Compliance Officer for a determination.

**Guidelines for Face to Face Use of Course Materials**

The following serves as guidance to instructors, librarians, and support staff concerning the circumstances under which they may, consistent with the Copyright Law, place course materials on Library reserves or in various course materials, i.e. handouts or course packs.

**A. *Single Copying for Teachers***

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

1. A chapter from a book

2. An article from a periodical or newspaper

3. A short story, short essay, or short poem, whether or not from a collective work

4. A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

**B. *Multiple Copies for Classroom Use***

Multiple copies (not to exceed, in any event, more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion *provided that:*

1. The copying meets the tests of brevity and spontaneity as defined below

2. Meets the cumulative effect test as defined below

3. Each copy includes a notice of copyright

**Definition*s***

***Brevity***

1. Poetry:

* A complete poem if less than 250 words and if printed not more than two pages or,
* from a longer poem, an excerpt of not more than 250 words.

2. Prose:

* Either a complete article, story, or essay of less than 2,500 words, or
* an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event, a minimum of 500 words.

[**NOTE:** Each of the numerical limits stated in 1 and 2 above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

3. Illustration:

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

 4. Special works:

* Certain works in poetry, prose, or in *poetic prose* which, often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience, fall short of 2,500 words in their entirety.

[**NOTE:** *Special works* may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof, may be reproduced.]

***Spontaneit****y*

1. The copying is at the instance and inspiration of the individual teacher, and

2. 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.

***Cumulative Effect***

1. The copying of the material is for only one course in the school in which the copies are made.

2. Not more than one short poem, article, story, essay, or two excerpts may be copied from either the same author or more than three from the same collective work or periodical volume during one class term.

3. There shall not be more than nine instances of such multiple copying for one course during one class term.

[**NOTE:** The limitations stated in 2 and 3 above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

**C. *Prohibitions as to Copying for Teachers and Classrooms***

Notwithstanding any of the above, the following shall be prohibited:

1. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts are accumulated or reproduced and used separately.

2. There shall be no copying of or from works intended to be *consumable* in the course of study or of teaching. These include workbooks, exercises, standardized tests, and test booklets and answer sheets and like consumable material.

3. Copying shall not:

* Substitute for the purchase of books, publishers' reprints, or periodicals.
* Be directed by higher authority.
* Be repeated with respect to the same item by the same teacher from term to term.
* No charge shall be made to the student beyond the actual cost of the photocopying.

**Compliance Procedures**

No copies will be made or placed in course packs without written permission.

If anyone makes copies of copyrighted material or asks someone to make unauthorized copies, the matter should be referred to the University Compliance Officer. The Compliance Officer in conjunction with the Vice President for Academic Affairs (VPAA) will take appropriate action as outlined within the university handbook.

**Obtaining written permission**

If written permission is required, the faculty member will contact the publisher and obtain permission. Each publisher has a procedure for doing so, and the information can be found on the publisher’s web page or in the copyright flyleaf of the material for which permission is required. If a fee is required, the department to which that faculty member reports will assume the cost of reprinting the material.

**Copyright Policy Committee Members:**

Donna Rees

Katherine Warren

Judy Lavell

Curtis Hayes

Gilda Ortego

**Glossary of Terms**

The following are some of the most difficult terms in the battle to understand copyright. The terms presented here can also be accessed within this site by clicking on various hyperlinked words.

**Author:** The originator of a copyrighted work.

**Classroom:** Section 110 of the Copyright code distinguishes between performance in class and transmission. A transmission is limited to classrooms (except in special circumstances due to disability). The Conference on Fair Use (CONFU, 1996) attempted to address this shortcoming, but failed to achieve consensus.

**Compliance Officer:** The University Librarian or his/her designee.

**Compilations:** Works formed by the collection and assembling of preexisting works that result in an original work of authorship.

**Copyright Notice:** A mark showing when an original work was first put into fixed form. Although the Berne Convention does not require a copyright notice on works created after 1989, one should affix copyright information to all original work. This can be done by including three pieces of information:

1. The symbol ©, or the word Copyrighted, or the abbreviation "Copr."
2. The year of original publication (this includes posting to the Web).
3. The name of the author.

For example: "© 2002 by John Smith."

**Copyrighted Works:** Any finished work in a fixed form (published or unpublished) is protected by copyright and, therefore, considered a copyrighted work.

**Derivative Work:** A work based upon one or more preexisting works such as a translation, dramatization, musical arrangement, etc.

**Display:** See Performance vs. Display.

**Dramatic Work:** Types of published or unpublished dramatic works that may be submitted for copyright registration include choreography, pantomimes, plays, treatments, and scripts prepared for cinema, radio, and television.

**Dramatic vs. Non-Dramatic:** Dramatic is defined as a story in which the narrative is not related but is represented by dialogue and action. Therefore, dramatic narrative would include plays and motion pictures. Non-dramatic literary works would include poetry, novels, and textbooks. Non-dramatic musical works covers both song and musical composition.

**Educational Purpose:** For the purpose of defining Fair Use, an educational purpose can be considered any educational endeavor undertaken in a classroom by a non-profit educational institution. This excludes, obviously, any commercial purpose.

**Fair Use:** Section 107 of the Copyright code (commonly called Fair Use) limits the rights of the author, allowing parts of a copyrighted work to be used without requesting permission. Such circumstances are limited to criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Nevertheless, Fair Use is **NOT** *carte blanche* to use any amount of a copyrighted work for any amount of time just because it is "for educational purposes." The government has very strict guidelines on how much can be copied and used in the classroom and for how long. For more information, see the Western New Mexico University Copyright Guidelines.

**Government Documents:** Documents created by government and military agencies are public record (unless otherwise stated) and, therefore, in the public domain.

**Infringement:** Illegal use of copyrighted material.

**Instructional Designer:** Any person whose primary duty is to assist instructors in online course design and to monitor the quality of WNMU’s online programs.

**Instructor:** is any person teaching any course, or assisting in the teaching of any course, whether for credit or not, under the auspices of Western New Mexico University.

**Joint Copyright Ownership:** Copyright of an original work by more than one author in which the contributions of any author are not distinguishable from another. An example of this would be the copyright on a scholarly paper written by colleagues.

**License:** The process in which an author grants rights to others to use/reproduce an original work (which, without permission, would create infringement).

**Literary Works:** Published works of the written word, such as books, magazines, and journal articles. In the verbiage of copyright, "literary" does not define the quality of the work.

**Master Tape:** The finished, edited, videotape of a program or project.

**Mediated Instructional Activities:** Activities in an online course that are controlled by or under the actual supervision of an instructor and are analogous to the type of performance or display that would take place in a live classroom setting.

**Moral Rights:** Rights granted to authors under the Berne Convention (1989) giving the author 1) right to attribution, and 2) right to integrity.

**Multimedia:** Any document that uses multiple forms of communication including the use of text, audio, graphics, animated graphics, and/or full-motion video.

**Non-Dramatic:** See Dramatic vs. Non-Dramatic.

**Off-Air Recordings:** Videotaped recordings of television programs from either broadcast or cable television stations.

**Original Work:** An original, distinctive piece created by an author or artist.

**Performance vs. Display:** A key distinction made by the *Technology, Education, and Copyright Harmonization Act* (TEACH Act) in using copyrighted material online is the difference between performance and display. Performance relates to the recitation or rendition of a work whether dramatic (as in a play or movie) or non-dramatic (the reading of a poem or the singing of a song). Display refers to copying and making available a text (whether the text of a play, novel, poem, or song lyrics).

**Periodicals:** Literary works published on a regular basis (i.e. annually, monthly, weekly).

**Permission:** Formal consent to copy a protected work.

**Plagiarism:** The process of copying the work of another without proper citation (i.e. claiming ownership of someone else's work). Not only is plagiarism unethical, but it is also illegal.

**Public Performance:** To perform or display a work "publicly" means-

1. to perform or display it at a place 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
2. to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

**Public Domain:** Any work that is not covered by copyright registration is considered to be in the public domain. This includes works created before 1922, created for public use, or those works that have over the years fallen into public domain because the copyright expired. This includes documents of the United States government unless stated otherwise.

**Reasonable Portion:** In print media, a reasonable portion is defined as 10% of the total work or 1,000 words, whichever is less. In the case of a book, an entire chapter (over 1,000 words) may be used if it does not represent a significant portion of the work.

**Significant Portion:** A significant portion of a work is the heart of the work. This may be as much as a section or as short as a page. If a book offers 10 tips to a better life, and one reprints that list (without the commentary from each of the 10 tips), a judge could rule that a significant portion of the work had been copied without permission.

**Synchronize:** To make action and sound coincide.

**System:** Refers to the device used to store instructional information in electronic form operated by WNMU or on contract to WNMU such as the WebCT learning management system housed at New Mexico State University.

**TEACH Act:** The Technology, Education, and Copyright Harmonization Act.

**Trademark:** Any symbol (word, logo, etc.) used by a company to distinguish its goods/services from those offered by others.

**Work For Hire:** A work created by an employee in the course of his/her duties or a commissioned work in which the artist and commissioner agree the work is for hire.

**Checklist to see whether you are ready to use the TEACH Act (reused with permission from University of Texas)**

My institution is a nonprofit, accredited educational institution or a governmental agency

It has a policy on the use of copyrighted materials

It provides accurate information to faculty, students, and staff about copyright

The university systems will not interfere with technological controls within the materials I want to use

The materials I want to use are specifically for students in my class

Only those students will have access to the materials

The materials will be provided at my direction during the relevant lesson

The materials are directly related and of material assistance to my teaching content

My class is part of the regular offerings of my institution

I will include a notice that the materials are protected by copyright

I will use technology that reasonably limits the students' ability to retain or further distribute the materials

I will make the materials available to the students only for a period of time that is relevant to the context of a class session

I will store the materials on a secure server and transmit them only as permitted by this law

I will not make any copies other than the one I need to make the transmission

The materials are of the proper type and amount the law authorizes:

* Entire performances of nondramatic literary and musical works
* Reasonable and limited parts of a dramatic literary, musical, or audiovisual works
* Displays of other works, such as images, in amounts similar to typical displays in face-to-face teaching

The materials are not among those the law specifically excludes from its coverage:

* Materials specifically marketed for classroom use for digital distance education
* Copies I know or should know are illegal
* Textbooks, course packs, electronic reserves, and similar materials typically purchased individually by the students for independent review outside the classroom or class session

If I am using an analog original, I checked before digitizing it to be sure:

* I copied only the amount that I am authorized to transmit
* There is no digital copy of the work available except with technological protections that prevent my using it for the class in the way the statute authorizes.