

Northern Seminary Copyright Guide
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Table of Contents

1. Introduction.....	1
2. The Meaning and Purpose of Copyright.....	2
Global reach of the law	2
Length of copyright.....	2
Copyright versus physical ownership.....	3
Copyright versus plagiarism.....	3
Copyright law versus contract law	3
3. Kinds of Works That Are Protected by Copyright.....	4
4. Works “Made for Hire”	5
5. When Copyright Permission is Needed	5
6. When Works Pass into the Public Domain.....	7
7. The Fair Use Exemption	8
How to apply Fair Use	8
8. Checklist for Fair Use.....	9
9. How to Get Copyright Permission to Use a Work.....	11
10. Sample Permission Request Letter.....	13
11. If You Violate Copyright	14
Who is responsible?	14
What if your good-faith efforts prove wrong?	14
What if you are notified that you have violated copyright?	14
12. Managing Your Own Copyright	15
Contracts with publishers.....	15

Registering your copyright.....	15
Granting Permissions.....	16
Joint copyright.....	16
13. Copyright Notices and Warnings.....	17
Notice for interlibrary-loan orders and copies made for library patrons:.....	17
Notice for copies made for purposes of Populi, e-reserve, and reproductions by the library for archival purposes:.....	17
Notice for copying equipment:.....	17
Notice for CCLI-licensed material used in chapel:.....	18
14. Use of Copyrighted Materials in Courses.....	19
Sample Scenarios.....	20
15. Chapel Services.....	22
Sample Scenarios.....	22
16. Classroom Activities.....	24
Sample Scenarios.....	24
Note about the TEACH Act (http://www.copyright.gov/legislation/pl107-273.html).....	25
17. Non-Curricular—File Sharing or Copying CDs / DVDs / Documents / Other Media.....	26
The Digital Millennium Copyright Act (DMCA) & Campus Liability.....	26
Sample Scenarios.....	26
18. Non-Curricular—Personal Web Pages.....	28
Sample Scenarios.....	28
19. Non-Curricular—Posters / Signs.....	29
Sample Scenarios.....	29
20. Reproductions by Libraries and Archives.....	30
21. Reproductions for Blind or Other Persons with Disabilities.....	32

1. Introduction

The purpose of this guide is to provide information to faculty, staff, and students at Northern Seminary about how to comply with U.S. copyright law. Knowing the law and applying it in good faith enables us to exercise with confidence the rights we have as users of copyrighted works. This exercise enables our academic and campus life to flourish. Knowing the law also helps those of us who are authors and creators to understand and manage our own copyrights.

Unless a footnote states otherwise, all quotations in this guide are taken from the U.S. Copyright Act, Title 17, U.S. Code, as amended. The full text of the Act is available at <http://www.copyright.gov/title17/>.

This guide was not written by a lawyer. It provides a lay understanding of complex legal matters and should not be used as a substitute for legal advice.

Many thanks are due to Lisa Richmond and other intrepid copyright mavens at Wheaton College for providing access to the Wheaton College Copyright Guide under the terms of a Creative Commons license. Likewise, this guide, revised and adapted for Northern Seminary, is licensed under the Creative Commons Attribution-Noncommercial-Share Alike 3.0 United States License. To view the rights you have been granted under this license, please visit <http://creativecommons.org/licenses/by-nc-sa/3.0/us>. You may freely use, copy, adapt, or distribute this guide for non-commercial purposes, provided that you acknowledge Northern Seminary and Wheaton College as your source.

For more information about Northern Seminary's copyright policies, contact:

Course reserves or general inquiries: Blake Walter, (630)620-2115, bwalter@seminary.edu

Designated Agent for Infringement Notification: Blake Walter, (630)620-2115, bwalter@seminary.edu

[Return to TOC](#)

2. The Meaning and Purpose of Copyright

Copyright is a limited, statutory monopoly granted to creators of “original works of authorship fixed in any tangible medium of expression.” It comes into effect automatically at the time the work is created.

Copyright law governs more than just copying. It establishes the rights that creators have in relation to their works, as well as the rights others may have to reproduce, distribute, modify, display, or perform them. Copyright is best understood as a bundle of rights, each of which may be exercised independently. Note that copyright can be both “infinitely divisible” (aspects can be divided between an infinite number of other parties) and “completely alienable” (you can give away *all* copyright to a work; many publisher contracts require this).

Copyright exists to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors exclusive Right to their respective Writings and Discoveries.”

U.S. Constitution, art. 1, sec. 8

“The primary objective of copyright is not to reward the labor of authors, but to promote the Progress of Science and useful Arts. To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.”

Supreme Court Justice Sandra Day O'Connor

“The constitutional purpose of copyright is to facilitate the flow of ideas in the interest of learning. The primary objective of our copyright law is not to reward the author, but rather secure for the public the benefits from creations of authors.”

U.S. House Report, Berne Convention Implementation Act of 1983

Global reach of the law

Because of international treaties the U.S. has signed, works created or published in countries other than the United States are subject to U.S. copyright law when used in the United States.

Length of copyright

Generally speaking, copyright lasts for the life of the author or creator, plus seventy years. Once this time is passed, works are said to enter the “public domain.” For more information, see chapter six of this guide, “When Works Pass into the Public Domain.”

Copyright versus physical ownership

The copyright adhering to a work is not the same as ownership of a particular copy of that work. For example, if you own a musical recording you may sell or give it away, but you may not copy it unless your copying can be justified by an exemption granted in the law.

Copyright versus plagiarism

Respecting copyright is not the same as giving proper attribution to the author or creator of a work you use. For example, it may be a violation of copyright to post on your Web site some material (text, image, etc.) that you copied from elsewhere on the Web, even if your posting clearly states the source of that image.

Copyright law versus contract law

Licensed works are governed by contract law. Contract law generally supersedes the provisions of copyright law and may give users more or fewer rights than the copyright law does.

[Return to TOC](#)

3. Kinds of Works That Are Protected by Copyright

Copyright law covers all “original works of authorship fixed in any tangible medium of expression,” whether published or unpublished.

A work is considered *original* if it “embodies some minimum amount of creativity.” (Kenneth D. Crews, *Copyright Essentials for Librarians and Educators* (Chicago: American Library Association, 2000), 9) For example, a translation of *The Lonely Planet Guide to Tasmania* and a particular arrangement of data may both be considered original works.

Fixed means that the work exists in a form that has “more than transitory duration.” A cake decorated with a Happy Birthday message is unlikely to be fixed, but a Web site almost certainly is.

Tangible medium of expression refers to what can be seen, heard, or felt, either directly or with the assistance of a machine or device now known or later developed. Such works include, for example:

- literary works (this designation covers works composed of words and/or numbers, such as books, articles, Web sites, and software programs)
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audio-visual works
- sound recordings
- architectural works

Copyright protection does not extend to:

- facts, ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries. Note however that a particular expression or arrangement of facts, ideas, etc., may be protected.
- works of the U.S. federal government or any U.S. federal government employee acting within the scope of his/her employment
- works in the public domain
- works for which copyright has expired (thus in the public domain)

Use the information in chapter 6 of this guide, “When Works Pass into the Public Domain,” to determine the copyright status of the work you wish to use.

[Return to TOC](#)

4. Works “Made for Hire”

Works “made for hire” are created by an employee within the scope of his or her employment. Administrative reports, committee minutes, the seminary catalog, this copyright guide, and software programs written for seminary activities are all examples of works “made for hire.” The seminary is deemed to hold the copyright to such works.

As an important exception to this doctrine, many educational institutions consider that the copyright to scholarly works created by faculty (such as books, articles, musical compositions, and art) generally belongs to the faculty member. Institutions and faculty members may enter into an agreement at any time to reassign some or all of these rights in particular cases.

Northern Seminary retains a non-exclusive right to all course materials created by faculty for courses taught at Northern Seminary. Materials such as (but not limited to) syllabi, reading lists, recorded lectures, exam materials, or Populi courses can be used, modified, or redistributed by the seminary.

The question of copyright needs to be considered carefully when using the services of independent contractors. Independent contractors are generally not considered employees for copyright purposes, and thus their work is not “made for hire.” For example, a film production company that is hired to make a promotional film will retain copyright of that film unless it assigns the copyright to the institution. Any rights that are to be assigned to the institution need to be clearly stated in writing before such projects begin.

[Return to TOC](#)

5. When Copyright Permission is Needed

Follow these steps to determine whether you need to get copyright permission in order to reproduce, distribute, modify, display, or perform a particular work. In addition, please consult chapters 14 through 28 of this guide for more specific information.

1. Is the work subject to a license agreement? Check the item itself and any accompanying documentation. The terms of the license agreement generally supersede copyright law.
2. If the work is not subject to a license agreement, is it in the public domain? See chapter 6 of this guide, “When Works Pass into the Public Domain.” Works in the public domain have no copyright restrictions.
3. If the work is not in the public domain, has permission for your intended use already been granted by the copyright owner?

If you wish to post a journal article in Populi, for example, check the copyright page of the journal or the publisher’s Web site to see if the publisher has already granted permission for educational uses such as this.

If you are the author of a journal article, visit https://northernseminary.libguides.com/open_access/sherpa_romeo_publisher_policies to determine whether the publisher automatically grants permission for your use.

Particularly for online documents, check for a statement of a Creative Commons license. For more information, see <http://creativecommons.org>.

4. If the work is not in the public domain, is your intended use justified by Fair Use? See chapter 7 of this guide, “The Fair Use Exemption.”
5. If none of the above applies, is there a particular copyright exemption given in the law, applying to your intended use? These exemptions are described in chapters 14 through 28 of this guide.

If none of the above applies, you must get permission from the copyright holder. See chapter 9 of this guide, “How to Get Copyright Permission to Use a Work.”

[Return to TOC](#)

6. When Works Pass into the Public Domain

From Carrie Russell, *Complete Copyright: An Everyday Guide for Librarians* (American Library Association, 2004). Used by permission.

Time of Publication	Conditions	Public Domain Status
Before 1924	None	In public domain
Between 1924 and 1978	Published without a copyright notice	In public domain
Between 1978 and 1 March 1989	Published without a copyright notice, and without subsequent registration	In public domain
Between 1978 and 1 March 1989	Published without a copyright notice, but with subsequent registration	70 years after death of author *
Between 1924 and 1963	Published with copyright notice, but copyright was not renewed	In public domain
Between 1924 and 1963	Published with copyright notice and copyright was renewed	95 years after publication date
Between 1964 and 1978	Published with copyright notice	70 years after death of author *
Between 1978 and 1 March 1989	Published with copyright notice	70 years after death of author *
After 1 March 1989	None	70 years after death of author *

* If the work is of corporate authorship, copyright endures for the shorter of 95 years from publication, or 120 years from creation.

[Return to TOC](#)

7. The Fair Use Exemption

Many activities of seminary life may fall under the Fair Use exemption of the Copyright Act. This exemption states, in part:

“The fair use of a copyrighted work, including such use by reproduction in copies . . . for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (b) the nature of the copyrighted work;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

§107, Copyright Act

How to apply Fair Use

Fair Use is a balancing test; each situation must be decided by analysis of the four factors. To date, the courts have provided little guidance in the interpretation of Fair Use in academic contexts. **The few examples of case law that do exist, however, strongly weight factor (d).** The more the reproduction of a copyrighted work can be demonstrated to *adversely* affect the potential market for that work, the *less likely* it becomes that the other three factors will outweigh the market value impact.

Congress has stated that “the doctrine [of Fair Use] is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts.” The more clearly each factor favors your intended use, the more confident you may be that the use is fair.

A helpful amplification of the four factors is provided in chapter 8 of this guide, “Checklist for Fair Use.” This checklist has no legal standing, however, and does not replace the need for you to apply “an equitable rule of reason” in any given situation. To assist you, sample scenarios have been included in most of the chapters of this guide that address specific situations.

Return to TOC

8. Checklist for Fair Use

Used with permission from Duke University:

https://northernseminary.libguides.com/open_access/duke_university_copyright_guidelines

Kevin Smith at Duke adapted this from a checklist created by Kenny Crews (Columbia) and Dwayne Buttler (Louisville) which is available under a shared CC license.

FACTOR ONE – PURPOSE OF THE USE

Favoring Fair Use

- Educational
 - o Teaching (including multiple copies for classroom use)
 - o Research
 - o Scholarship
 - o Criticism
 - o Comment
- Transformative or Productive use
(Changes the work to serve a new purpose)
- Nonprofit use.

Disfavoring Fair Use

- Commercial, entertainment or other use.
- Verbatim or exact copy, not transformative.
- Profit generating use.

FACTOR TWO – NATURE OF THE COPYRIGHTED MATERIAL

Favoring Fair Use

- Factual, nonfiction, news
- Published work

Disfavoring Fair Use

- Creative or consumable work.
(art, music, feature film, fiction; workbook, case study or test)
- Unpublished work

FACTOR THREE – AMOUNT COPIED

Favoring Fair Use

- Small quantity used—e.g. single chapter or other short excerpt (less than 10% of the whole work).
- Portion used is not central to work as a whole.
- Amount is appropriate to the educational purpose.

Disfavoring Fair Use

- Large portion or entire work.
- Portion used is central or the “heart” of the work.
- Includes more than necessary for educational purpose.

FACTOR FOUR -- EFFECT ON THE MARKET FOR THE ORIGINAL

Favoring Fair Use

- No significant effect on the market or potential market for the copyrighted work.
- One or few copies made and/or distributed.
- No longer in print; absence of licensing mechanism.
- Restricted access (limited to students in a class or other appropriate group).
- One-time, spontaneous use (no time to obtain permission).

Disfavoring Fair Use

- Cumulative effect of copying would be to substitute for purchase of work.
- Numerous copies are made and/or distributed.
- Reasonably available licensing mechanism for obtaining permission exists (CCC license or off-prints for sale)
- Copy will be available on the Web or otherwise broadly distributed.
- Repeated or long-term use.

Return to TOC

9. How to Get Copyright Permission to Use a Work

Before following these steps, please consult chapter 5 of this guide, “When Copyright Permission is Needed.”

1. Identify the copyright holder. Many works provide this information in a copyright notice on the item itself. The records of the U.S. Copyright Office may be searched at <http://www.copyright.gov>. Stanford University Library also makes available a database of copyright-renewal records at https://northernseminary.libguides.com/open_access/stanford_copyright_renewals_database.
2. If the copyright holder can be identified, look for instructions on the holder’s Web site. If the copyright holder does not provide instructions or if the holder is an individual, send a written letter as shown in chapter 10 of this guide, “Sample Permission Request Letter.”
3. If the copyright holder or contact information cannot be identified, place your request through the Copyright Clearance Center (<http://www.copyright.com>) or one of the agencies listed below.

Music:

American Society of Composers, Authors and Publishers:

https://northernseminary.libguides.com/open_access/ascap_music_licensing

Broadcast Music, Inc.:

https://northernseminary.libguides.com/open_access/bmi_music_licensing

SESAC (The Society of European Stage Authors and Composers):

https://northernseminary.libguides.com/open_access/sesac_european_music_licensing

Films:

Motion Picture Licensing Corporation:

https://northernseminary.libguides.com/open_access/motion_picture_licensing_corporation

Plays:

Dramatists Play Service, Inc.:

https://northernseminary.libguides.com/open_access/dramatists_play_service_licensing

Samuel French Theatrical licensing:

https://northernseminary.libguides.com/open_access/samuel_french_theatrical_licensing

Baker’s Plays at Doollee.com:

https://northernseminary.libguides.com/open_access/bakers_plays_at_doollee_com

4. The copyright holder may decide to charge you for permission. Permissions received through agencies will almost certainly come with a non-negotiable fee. Only materials where permission is granted without cost may be used in Northern Seminary courses.
5. Keep records of all correspondence. If you receive oral permission from the copyright holder, follow up with a written confirmation.
6. It is good form to publicly thank copyright holders for permissions received. This is often done in an acknowledgements section of the new work you create or publish.
7. Note that failure to receive permission (for example, when the copyright holder does not respond to your request) does not necessarily justify the use of a work.

[Return to TOC](#)

10. Sample Permission Request Letter

If sending via postal mail, include a self-addressed, stamped envelope:

[date]

[copyright owner's or agent's name and address]

Dear [copyright owner or agent]:

I am writing to ask your permission to use [give full citation of the work] for the purpose of [describe the intended use in sufficient detail, especially whether the material will be posted online or will only be distributed in hard copy].

Please complete and return this form to me at your earliest convenience. Thank you very much for your consideration.

Sincerely yours,

[your name, position, and contact information]

I do _____ do not _____ grant permission for my work to be used for the purpose stated above.

Name _____

Signature _____

Date _____

[Return to TOC](#)

11. If You Violate Copyright

Who is responsible?

According to the law, responsibility to avoid violating copyright rests primarily upon the individual, not the academic institution. It is important therefore that you make a good-faith effort to understand the law and comply with it.

What if your good-faith efforts prove wrong?

The only way to know for sure that you've applied the law incorrectly would be a court ruling against you. It is reassuring to know, however, that academic employees acting within the scope of their employment will not be held liable for the statutory damages of copyright infringement if they "reasonably believed and had reasonable grounds for believing that [their] use was fair use" (§504 c. 2, Copyright Act – see <http://www.copyright.gov/title17/92chap5.html#504>).

What if you are notified that you have violated copyright?

The responsibility to monitor copyright compliance rests with the copyright holder. If a copyright holder believes that you have violated copyright, that person or his/her lawyer will most likely send you a "cease and desist" letter. If you receive such a letter but do not wish to comply because you believe your use is justified under the law, please notify Blake Walter, Northern Seminary Library, (630)620-2115, bwalter@seminary.edu. In some cases, we may choose to get legal advice.

Return to TOC

12. Managing Your Own Copyright

Contracts with publishers

When your book, article, image, or other work is accepted for publication, the publisher will give you a contract to sign. This contract usually transfers to the publisher all copyright of your work. The publisher is granted not only the exclusive right to publish your work, but also the exclusive right to enter into contracts or give permission for future uses of your work (such as its inclusion in a product such as JSTOR, its re-publication, or use by individual people) and to charge permission fees for such uses. Once you transfer your copyright to a publisher, even you, the author, must seek the publisher's permission for uses beyond what is permitted by Fair Use and the other exemptions specified in the law.

Although it may prove difficult, you are entitled to negotiate the contract. For example, you may want to assign to a publisher the right to publish your article in a scholarly journal, but reserve the right to make your article available on the Web in a publicly accessible archive after a certain length of time has passed.

Some publishers permit professors and students to freely copy works or parts of work for many academic uses. Other publishers have restrictive policies and require high permission fees. Consider the model you want to support. Copyright is one consideration among many to bear in mind when deciding which publishers to consider for your own publications.

This is not to say that publishers who charge permission fees are acting unfairly. Each publisher has a legitimate interest in how the works it publishes are made available and used, and at what price. The copyright law is concerned with balancing the interests of copyright holders and users of copyrighted works, in order to “promote the progress of science and the useful arts” (see chapter 2 of this guide, “The Meaning and Purpose of Copyright”). The better you understand copyright law, the better equipped you are to encourage publishers to maintain this balance.

Registering your copyright

To register your copyright, follow the instructions provided by the U.S. Copyright Office at <http://www.copyright.gov>. As of January 2010, the registration fee is \$35.

It is not necessary to register your copyright in order to assert it. It is recommended that you do so, however, for the following reasons:

- If you want to encourage people to seek your permission for uses beyond what the law grants them, you should make it possible for them to find out who you are and how you may be reached.
- If you do not register your copyright with the U.S. Copyright Office, you may not be able to collect damages in the event of a lawsuit.

Granting Permissions

As a copyright holder, you may assign or license all or some of your rights to others. For example, you may decide to allow unlimited copying and distribution of your work with the proviso that the uses made of it be strictly non-commercial. Or, you may allow one theatre club to perform your play but not give permission to other clubs.

If you retain copyright to your work, consider marking it with a Creative Commons license in order to provide potential users with information about the types of uses you are willing to grant automatically. This will obviate the need for the user to get in touch with you to ask permission for those uses, and may help make your work more widely known and used. For more information, please consult <https://www.creativecommons.org/licenses>.

Exclusive rights must be granted in writing, but nonexclusive rights (that is, rights you give to more than one party) can be granted orally as well as in writing.

Joint copyright

You may hold copyright jointly with other creators or authors of a work. In such cases, the parties are free to exercise their rights independently, including the right to grant non-exclusive rights to new parties, as long as profits are shared equally. One party cannot re-assign copyright or grant an exclusive right to new parties, however, without the consent of the others.

If you embark upon a work of joint authorship, you are advised to consider the copyright question carefully. You and your colleague(s) should put your copyright agreement in writing, before the project begins.

Return to TOC

13. Copyright Notices and Warnings

Notice for interlibrary-loan orders and copies made for library patrons:

This notice must be printed prominently on interlibrary-loan order forms and posted at locations where copies are made for patrons:

Notice: Warning concerning copyright restrictions. The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be used for any purpose other than private study, scholarship or research. If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of Fair Use that user may be liable for copyright infringement. This institution reserves the right to refuse a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Notice for copies made for purposes of Populi, e-reserve, and reproductions by the library for archival purposes:

This notice must be affixed to copies made, unless the copy already contains a notice of copyright:

This material may be protected by copyright.

A better notice, recommended especially for works delivered via Populi:

This material is made available for the educational purposes of students enrolled in [course] at Northern Seminary. The material is subject to U.S. copyright law and is not for further reproduction or transmission.

Notice for copying equipment:

This notice must be posted on or near all photocopiers and other similar equipment on campus.

Notice: The copyright law of the United States (Title 17, U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement. For more information, please consult the Northern Seminary Copyright Guide at _____

Notice for CCLI-licensed material used in chapel:

From the CCLI web site: As part of the terms and agreement you are responsible for including the copyright information on all songs reproduced under the Church Copyright License. This includes the song title, writer credit(s), copyright notice, and your church's CCLI license number...for example:

"Hallelujah" words and music by John Doe
©2000 Good Music Co.
CCLI License # 0000

[Return to TOC](#)

14. Use of Copyrighted Materials in Courses

This section describes how you may use documents (book chapters, journal articles, etc.), audio, video, or images in Populi or on reserve in the library.

For assistance, please contact Blake Walter, Northern Seminary Library, (630)620-2115, bwalter@seminary.edu.

Note: the application of Fair Use to the provision of course readings in particular is a highly contested area of copyright law. The following policy is based upon an extensive lay review of existing case law, opinions published by lawyers, and the official positions of such parties as the Association of American Universities, Association of Research Libraries, Association of American University Presses, and Association of American Publishers. Some aspects of our policy, such as the status of book chapters and the rules for journal articles, are not given in the text of the law, but represent what we believe is a moderate yet assertive understanding of the spirit of the law.

1. You may create a link in your Populi course to a copy of the work that is available elsewhere on the Web. For example, you may wish to create a link to a journal article that is available in full text online through Northern Seminary Library. In such cases, no copyright consideration comes into play. To determine which articles are available online, or for help creating the link, please consult Blake Walter in the library.
2. If linking is not possible, follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows:
 - a) Copies of book chapters and journal articles may be posted without getting permission, subject to the following limitations:

Copyright permission is required for:

- 1) book chapters (or parts of books) equal to more than 7% of the whole book. Apply this rule to single-author books and to edited volumes.

A single photocopy of a book chapter or a part of a book may, however, be placed on reserve at the front desk in the library without copyright permission *if the library does not own a copy of the book*.

- 2) journal articles listed in your syllabus. Because journal articles are usually short works, it generally is not acceptable to post only a portion of a journal article as an assigned reading. In the case of a long article, it is acceptable to post up to 7% of an article in Populi without copyright permission.

A single photocopy of a journal article may, however, be placed on reserve at the front desk in the library without copyright permission.

- b) Copies of dramatic literary or musical works, such as stage plays, operas, and audio-visual recordings, may only be uploaded to Populi “in an amount comparable to that which is typically displayed in the course of a live classroom session.”

It is never permissible to remove or defeat encryption or copyright protection measures on media in order to create a digital copy.

3. If copyright permission is required for any material you wish to use, you must provide proof of granted copyright permission before the material will be uploaded to Populi. Faculty are responsible for securing copyright permission; only materials where permission is granted without cost may be used.
4. The distribution of photocopied materials in class is governed by these same principles. It is a violation of Northern Seminary copyright policy to distribute copies of copyrighted material without prior permission from the copyright holder.
5. Materials posted in Populi, placed on reserve in the library, or distributed in class:
 - must not substitute for the purchase of books or other materials readily available on the market for a fair price.
 - must not be copyright protected “consumable materials” such as workbooks, answer books, quizzes, etc. intended to be purchased and used by every student.
 - must not be copies of works that are marketed “primarily for the purpose of display as part of mediated instructional activities transmitted via digital networks.” In other words, commercially available online instructional modules cannot be copied; they must be purchased.
 - must include a notice of copyright. For the wording of notices and warnings, see chapter thirteen of this guide, “Copyright Notices and Warnings.”
 - must not be made from a copy that was not lawfully made and that you knew or had reason to believe was not lawfully made.

Sample Scenarios

Q: I have created some course Web pages outside of Populi. Is it OK for me to post copyrighted documents there for my students to read online and/or download?

A: No. The seminary interprets such activities as falling outside the scope of Fair Use and other copyright exemptions described in this section. You must get permission of the copyright holders before posting copyrighted documents in this way.

Fair Use analysis:

Purpose: favorable. The use is being made at a nonprofit educational institution for the purpose of teaching, research, or scholarship.

Nature: moderately favorable. The documents (let us assume) have been previously published and are factual or nonfiction works.

Amount: moderately unfavorable. The whole work is being posted.

Effect: unfavorable. Making the documents freely and publicly available online could replace sale of the work or significantly impair the market or potential market for the work. (This is the decisive factor in our overall determination against Fair Use in this scenario, based on the seminary's understanding of U.S. case law.)

Q: I want my students to watch a video of a political speech and analyze it rhetorically. Can I post a copy of this video within Populi in order to stream it to my students over the Web?

A: Yes. The seminary considers this an instance of Fair Use. Note also that you could choose to place a copy of the video on reserve at the library.

Fair Use analysis:

Purpose: favorable. The use is being made at a nonprofit educational institution for the purpose of teaching, research, scholarship, criticism or comment. Populi restricts access to only your students.

Nature: moderately favorable. The video (let us assume) has been previously published and is factual or nonfiction.

Amount: moderately favorable. The whole work is being posted, but this length is appropriate to the favored educational purpose. It will be displayed "in an amount comparable to that which is typically displayed in the course of a live classroom session."

Effect: favorable. Streaming the video from Populi does not significantly impair the market or potential market for the work because Populi restricts access to only your students.

[Return to TOC](#)

15. Chapel Services

This section describes how you may use works in chapel.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

The following is not an infringement of copyright:

“Performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly.” §110 (3), *Copyright Act*

While Section 110 (3) of the Copyright Act gives broad permission for the performing or displaying of certain copyrighted works like hymns, Christmas cantatas, passion plays, etc., it does not give permission to duplicate or distribute copyrighted material. It also only governs activity taking place at the place of worship, not activity outside the place of worship or the transmission of copyrighted works to outside the place of worship. *Copying* a sheet of music onto a transparency or *scanning or transcribing it* to a digital image that can be projected from a computer is not permitted by §110 (3).

All music copied either onto handouts to be distributed or into a digital format for projection on a screen for chapel is subject to the terms of the seminary’s CCLI license. During scheduled reporting periods, all instances of copying are tallied and reported back to CCLI. Complete information on the CCLI license can be found at <https://us.ccli.com/>, including instructions in the site’s Support section.

Works not covered by CCLI may not be duplicated for chapel services without prior permission from the copyright holder.

Any recordings of chapel services should not include the performance or display of copyrighted works unless prior permission has been obtained to further broadcast the copyrighted material outside of the chapel service.

For further information about the seminary’s CCLI license, contact Blake Walter, (630)620-2115, bwalter@seminary.edu.

Sample Scenarios

Q: May I project a passage of Scripture on the screen during a chapel service, taken from any version of the Bible?

A: One of the best resources to consult is <http://www.biblegateway.com>. Follow the links to “Available Versions”, click on a specific version, and click on the link to view copyright information about that version. Many versions allow copying or quoting of passages up to 500 verses, often with additional permissions specifically for use in worship services or church bulletins.

Q: May I project the words or music of a hymn or praise song?

A: Only if the work is included under the terms of our CCLI license.

Q: May I project images taken from the Web or elsewhere?

A: Be careful with the use of images in multimedia presentations. Unless you know that the image is in the public domain (“old” art, architecture visible to the public), or you know that the site from which the images come gives permission to use the material in presentations, you might not have permission to use it. Projection for a limited time to a limited audience (the duration of a chapel session) is more likely to be covered by Fair Use than presentations that are recorded for future playback or uploading to the Web. Use for chapel is different than use in a classroom. (See chapter 16 below.)

Q: May I show a clip from an audio-visual work during a chapel service?

A: “Dramatico-musical works of a religious nature” are permitted. For non-religious audio-visual works, short clips that do not represent a substantial portion of a work or the heart of a work are permissible under Fair Use. Especially when working with audio-visual clips from the Internet, check for a Creative Commons license that gives permission for non-profit use.

Q: May I photocopy the sheet music for all of the performers participating in a chapel service?

A: Only if it is covered by the seminary’s CCLI license or if the work specifically gives permission for such copying. Even if a hymn is in the public domain, the sheet music in the hymnal is most likely copyrighted by the publisher.

Fair Use analysis:

Purpose: favorable. The use is being made at a nonprofit educational institution.

Nature: unfavorable. The music to be performed is a highly creative work.

Amount: unfavorable. The whole work is being copied.

Effect: unfavorable. The photocopying would replace sale of the work and numerous copies would be made. A mature market exists to supply sheet music to musicians.

[Return to TOC](#)

16. Classroom Activities

This section describes how you may use works in the classroom. The law provides broad permission for most classroom activities.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows.

The following is not an infringement of copyright:

“Performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audio-visual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title and that the person responsible for the performance knew or had reason to believe was not lawfully made.” §110 (1), *Copyright Act*

Sample Scenarios

Q: I use PowerPoint slides to supplement my course lectures. May I include on them cartoons, graphs, or other images that I copied from elsewhere?

A: Yes. This use is justified by the copyright exemption described in this section. But be sure to exercise good scholarly practice by citing your sources.

Q: Can I safely quote the following phrase in class: “When stride is long, and breath is deep, and keen the mountain-air, Come back to me! Come back to me, and say my land is fair!”

A: This is an odd question. Why do you ask?

Q: May I show a documentary or play a piece of music in class?

A: Yes. These uses are justified by the copyright exemption described in this section.

Note about the TEACH Act (<http://www.copyright.gov/legislation/pl107-273.html>)

In 2002, Congress expanded Section 110 (2) of the copyright law to provide additional options for educators wanting to broadcast copyrighted material for the purpose of distance education. The TEACH Act adds over 13 requirements/conditions to what may be transmitted for the purposes of distance education. An unfortunate side-effect of the TEACH Act is that meeting the requirements of the Act is so complex, many educators resort to Fair Use instead because it is less complex than the expanded regulations of Section 110 (2). A suggested checklist for the TEACH Act can be found at:

https://northernseminary.libguides.com/open_access/uoftx_libraries_teach_act_information

Return to TOC

17. Non-Curricular—File Sharing or Copying CDs / DVDs / Documents / Other Media

This section describes how faculty, staff, and students may copy or reformat works for non-curricular purposes.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

The Digital Millennium Copyright Act (DMCA) & Campus Liability

In 1998, the Digital Millennium Copyright Act added section 512 to Chapter 5 of Title 17, United States Code. Section 512 provides some limitations to liability for network service providers, which includes most college and university I.T. departments. One of the prerequisites for network service providers is to list on their web site and provide the Copyright Office the contact information for a designated agent to respond to infringement notifications from copyright holders. See https://northernseminary.libguides.com/open_access/dmca_copyright_directory

Northern Seminary’s designated agent is Blake Walter, (630)620-2115, bwalter@seminary.edu.

Sample Scenarios

Q: I own some videotapes and would like to transfer them to DVD. Is that OK?

A: Yes. Fair Use is generally understood to include the right to reformat material you own. This is especially true if the DVD version is not available on the market.

Q: I borrowed a CD from the library. May I make a copy of it for myself?

A: Only if you get the copyright owner’s permission.

Q: I’m creating a PowerPoint presentation for an upcoming meeting on campus. Can I include an image I found on the Web?

A: Probably, but it would be better to use an image that provides explicit permission for such uses. (See the Sample Scenario for the use of images in chapel in chapter 15.)

Fair Use analysis:

Purpose: moderately favorable. Your use is for an activity of a nonprofit educational institution, but it isn’t for the purpose of teaching or scholarship.

Nature: moderately unfavorable. The image is creative rather than factual.

Amount: unfavorable. You want to use the whole work.

Effect: favorable. You are making only one copy, and there is no significant effect on the market or potential market for the image. You are making the image available only for a limited time.

[Return to TOC](#)

18. Non-Curricular—Personal Web Pages

This section describes how faculty, staff, and students may use works on non-curricular Web pages.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

Sample Scenarios

Q: Can I include on my Web site a text or image created by someone else?

A: Probably not, unless you have the copyright owner’s permission.

Fair Use analysis:

Purpose: moderately unfavorable. Your use is entertainment or general interest. If you are profiting from the site, your use is commercial (less favorable).

Nature: favorable or unfavorable. The work in question is factual (more favorable) or creative (less favorable).

Amount: favorable or unfavorable. You are using a portion of the work (more favorable) or the whole work (less favorable).

Effect: unfavorable. You are making the work publicly accessible. This could replace sale of the work or significantly impair the market or potential market for the work.

[Return to TOC](#)

19. Non-Curricular—Posters / Signs

This section describes how faculty, staff, and students may use works on posters or signs to be displayed publicly.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed.”

Sample Scenarios

Q: Can I include on my poster an image I found on the Web?

A: Probably, but it would be better to use an image that provides explicit permission for such uses.

Fair Use analysis:

Purpose: favorable or unfavorable. Your use is educational (more favorable) or entertainment or general interest (less favorable). If you are advertising a commercial service, your use is less favorable.

Nature: favorable or unfavorable. The image has low artistic value (more favorable) or high artistic value / creativity (less favorable).

Amount: unfavorable. You are using the whole image.

Effect: moderately favorable. You are making the work publicly accessible, but only for a limited time. Your use of the image likely will not replace sale of the work or significantly impair the market or potential market for the work.

[Return to TOC](#)

20. Reproductions by Libraries and Archives

§108, Copyright Act provides specific copyright exemptions for libraries and archives for the purposes of preservation and interlibrary loan:

Note: for the wording of notices and warnings described below, see chapter 13 of this guide, “Copyright Notices and Warnings.”

Libraries and archives may:

- make up to 3 copies of an unpublished work in their collections solely for purposes of preservation and security or for deposit for research use in another library or archives. If the copy is made in digital format, it may not be made available to the public in that format outside the premises of the library or archives.
- make up to 3 copies of a published work solely for the purpose of replacement of a copy that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if:
 - a) the library or archives has determined, after a reasonable effort, that an unused replacement cannot be obtained at a fair price, and
 - b) a copy made in digital format is not made available to the public in that format outside the premises of the library or archives.
- make one copy for a patron or to fulfill an interlibrary loan request of no more than one article or other contribution to a copyrighted collection or periodical issue, or a small part of any other copyrighted work, if:
 - a) the copy becomes the property of the user and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research; and
 - b) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.
- make one copy for a patron or to fulfill an interlibrary loan request of an entire work or a substantial part of it, if:
 - a) the library or archives has determined, after a reasonable effort, that the work cannot be obtained at a fair price; and
 - b) the copy becomes the property of the user and the library or archives has had no notice that the copy would be used for any purpose other than private study, scholarship, or research; and
 - c) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright.

In all cases, the library or archives:

- may not charge more than what is necessary to cover the cost of making the copy.
- must include a notice of copyright on the copy made, or in the absence of a notice, a warning that the material may be protected by copyright.
- will not be held liable, nor will an employee of the library or archives be held liable, for copyright infringement resulting from unsupervised copying by patrons, provided that copying equipment displays a notice that the making of a copy may be subject to copyright law.
- may not engage in systematic or concerted copying or distribution of copies.
- In addition to the specific exemptions provided here, libraries and archives may also avail themselves of the Fair Use exemption.

[Return to TOC](#)

21. Reproductions for Blind or Other Persons with Disabilities

§121, Copyright Act provides specific copyright exemptions when reproducing or reformatting works for use by blind or other persons with disabilities.

Follow the steps given in chapter 5 of this guide, “When Copyright Permission is Needed,” modified as follows:

- It is not an infringement of copyright “for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities, provided that
- Such copies include a notice that any further reproduction or distribution in a format other than a specialized format is an infringement and
- Such copies include a copyright notice identifying the copyright owner and the date of the original publication.”

[Return to TOC](#)