

LUTHER COLLEGE

POLICIES AND PROCEDURES

Department: Luther Book Shop, LIS, Music Department
Subject: Copyrighted Materials
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Approved By:

I. Policy

This policy outlines Luther College's commitment to adhering to the provisions of the United States Copyright Law (Title 17, United States Code).

II. Scope

This policy applies to all academic and administrative offices as well as individuals employed by the College.

III. Terms and Definitions

Copyright is a form of legal protection for authors of original creative works (published and unpublished), including literary, musical, dramatic, artistic and other intellectual products. The copyright holder, who may or may not be the author, possesses the exclusive right to authorize reproduction of a work; distribute copies of the work; prepare derivative works based on the copyrighted work; and publicly perform or display the work. Violating the rights of copyright holders, or directing others to do so, is illegal.

IV. Procedures and Guidelines

- A. College employees who use copyrighted works in educational, research and or/other activities affiliated with the College must obtain written permission for the use of each work from the owner of the copyright. Obtaining written permission to use copyrighted material for reproduction is the responsibility of the academic or administrative department or individual. The Luther Copyright Policy can be located at <http://www.luther.edu/copyright>. A copy of the Copyright Act may be obtained via the internet at <http://www.copyright.gov/title17/92chap1.html#1001>.
- B. To obtain written permission to use copyrighted materials, an individual must
 - identify who the copyright holder is as noted in the work. Typically there is a page in the work that shows who owns the copyright, the year of the publication and the publisher's name.
 - complete the copyright permission form attached and mail or fax to the copyright holder.

- allow ample time prior to use for the copyright permission to be granted.
- C. Copyright law includes exemptions that limit the rights of copyright holders. The Fair Use Doctrine, in particular, allows that, under certain circumstances, one can exercise one of the exclusive rights of the copyright owner without first obtaining permission. The applicable section of the copyright law reads:
- Sec. 107. Limitations on exclusive rights: Fair use
 - Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, 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:
 - o the purpose and character of the use, including whether such use is a commercial nature or is for nonprofit educational purposes;
 - o the nature of the copyrighted work;
 - o the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - o 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 the above factors.
 - Fair Use Guidelines
 - o Purpose of the use – teaching and learning efforts favor fair use; moneymaking, commercial purposes do not.
 - o Nature of the copyrighted work – a nonfiction, published work is a more likely candidate for fair use; the use of a creative and/or unpublished work is less likely to be judged fair use. However, photocopies of pages from a textbook or a workbook developed for the classroom is less likely to be considered fair use since harm to the potential market for the work is more direct.
 - o Amount of the work used – less is better; a single chapter or article lends itself to fair use more than multiple chapters or articles; using 10% of a work is more likely to be judged fair use than using 50% of a work.
 - o Effect on the potential market for the work - owning an original copy of the work and making only one or a few copies is more likely to be viewed as fair use; making copies available numerous or repeatedly using the same work lessens fair use claims especially when the work is readily available for sale or affordable permission is easily available.
 - o Practicing fair use involves considering all four of these factors and balancing the results. In some cases, one factor may point toward fair use, another away from it. Good faith efforts however, should lead to reasonable fair use judgments. These, in turn, provide a real level of protection from statutory damages in the event of a claim of copyright infringement.
 - A determination on the applicability of this exception is very fact specific. You may find the Agreement on Guidelines for Classroom Copying in the Not-For-Profit Educational Institutions with respect to Books and Periodical helpful in making this determination. It can be accessed at <http://www.utsystem.edu/ogc/intellectualproperty/clasguid.htm>. It is not law. Rather, it is an agreement between the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Revision, the Authors League of America and the Association of American Publishers, Inc. In the view of the parties to the agreement, the guidelines state the minimum and not the maximum standards of educational fair use.

D. Faculty who create course packs and customized anthologies for the classroom, if derived from copyrighted materials, must obtain permission either from the copyright owner (usually the publisher) or pay a royalty fee through a vendor, such as the Copyright Clearance Center. Each item in the packet must have copyright permission. Permission needs to be requested each semester the packet is assigned. Questions may be directed to the Director of the Luther Book Shop. Copyright permission requests may be made online using at www.copyright.com. When submitting a course pack, anthology, or lab manual, the faculty member will be asked to sign the Copyright Clearance Declaration. By signing this document, the creator is acknowledging the material used:

- Falls under Fair Use or Public Domain.
- Is copyrighted and permission has been granted to duplicate and distribute.

Some basic guidelines for creating course packs and customized anthologies are as follows:

- Every chapter and article in a course pack, if taken from copyrighted material, requires permission from the copyright holder.
- Each item in the course pack must include a note of copyright.
- Permission needs to be requested for each semester in which the course pack is used.

E. Music is also copyrighted material. Separate copyrights exist for musical performances and sheet music. Additional copyrights may exist for the lyrics. Music dealers usually sell sheet music in sets (e.g. band sets, chorus sets, etc.): hence, single copies may not be available, but can be ordered directly from the publisher.

- Fair use guidelines authorize limited copying and altering of sheet music. They also authorize recording student performances. What can be copied in accordance with the circumstances follows:
 - o For a performance, emergency copying is permitted so long as replacement copies are subsequently purchased.
 - o Academic purposes other than performance (single copies for personal or library reserve use). An entire performable unit (section, movement, aria, etc.) if the unit is out of print or only available in a larger work.
 - o Multiple copies for classroom use (non-performance) use – excerpts may comprise no more than 10% of a whole work and may not constitute a performable unit.
 - o Music recordings – a single copy may be made for the purpose of constructing aural exercises or examinations. Otherwise the restrictions on the copying non-music recordings apply.

F. Public performance of a copyrighted work may also constitute copyright infringement. A performance that takes place at the College will generally be considered a public performance. Permission to perform copyrighted work may be obtained through ASCAP and BMI, two companies that Luther College has performance agreements with. Contact the Campus Programming Office, ext. 1291, to request performance permission through ASCAP and BMI. Any music or dramatic work not covered by these agreements requires permission from the copyright owner, and individuals or groups desiring to use such works must seek permission of the copyright owner. Public performances of copyrighted works, however, are permitted under certain circumstances. The statute distinguishes between dramatic works and non-dramatic works, grouping musical performances (but not musicals) with the latter.

Examples of dramatic works:

- when a performance takes place in the course of a face-to-face teaching activity.
- when it is conducted in a classroom or similar place devoted to instruction.
- in the case of an audiovisual work, when the copy has been lawfully made.

Performances of dramatic works must meet the above three criteria. If in doubt, you should seek permission from the copyright holder. Permission to perform a dramatic work does not automatically give license to videotape the performance. If the dramatic work is protected by copyright, permission is required to videotape a performance as well as retain and distribute that videotape.

- G. The use of music raises several issues under copyright law. First of all, when music is performed live, the performance will be governed by the rules discussed in the preceding section. When pre-recorded music is played before a group there is not only a performance of the musical work but also the particular recording. Under copyright law, however, the owner of a copyright in a musical recording, as distinct from the underlying composition does not have the exclusive right to perform the record publicly. Therefore, when pre-recorded music is performed, only the performance of the underlying composition need be analyzed under the statutory provisions governing performances to ensure compliance with the copyright law. On the other hand, the owner of a copyright in a musical recording does have the exclusive right to reproduce the recording. Therefore, when pre-recorded music is copied, for example by making a tape of a song on a compact disc, the exclusive rights of both the owner of the copyright in the recording and the owner of the copyright in the composition may be infringed.
- H. Photocopying for library reserve use is not mentioned specifically in the Copyright Act. Questions concerning copyright compliance for library reserve may be directed to the Public Services Coordinator, ext. 2077, at the Circulation Desk.
- I. Classroom use of films and videotapes – possession of a film or video does not confer the right to show the work. The copyright owner specifies, at the time of purchase or rental, the circumstances in which a film or video may be “performed.” For example, the videocassettes from a video rental outlet usually bear a label that specifies “Home Use Only.” However, whatever their labeling or licensing, use of this media is permitted in an educational institution so long as certain conditions are met. Section 110 (1) of the Copyright Act of 1976 specifies that the following is permitted:
- 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 the instruction, unless, in the case of a motion picture or other audiovisual work, the performance or the display of individual images is given by means of a copy that was not lawfully made, and that the person responsible for the performance knew or had reason to believe was not lawfully made.
- Assistance for rental of films and videotapes is available from the Interlibrary Loan Coordinator, ext. 1726, at the library.
- J. Art works are subject to copyright. The duplication of such works in their entirety by photography, sketching, rendering, casting, or printing is a violation of the copyright law. The only exception is for copying illustrations in a book or periodical under the terms of the “Agreement on Guidelines for Classroom Copying.”
- K. Electronic information – the use of the internet as it relates to intellectual property rights is currently the subject of intense debate, and there are no specific guidelines for information freely available on the web other than those we may infer from the examples for other media. Providers manage authorized access to electronic information by linking and Fair Use guidelines apply to the transmission or posting of digital information. Questions about the use of copyrighted material in electronic databases may be directed to the Electronic Resources Librarian, ext. 1227.

- L. Computer software – software that is available at Luther College is strictly controlled by licensing agreements. Questions about software are handled on a case-by-case basis according to the licensing agreement, and may be directed to the Academic Technology Librarian, ext. 1288
- M. General questions about copyright compliance may be directed to the library Reference Desk, ext. 1163.
- N. Web Addresses:
 - SUL: Copyright & Fair Use: Library Copyright Guidelines
<http://fairuse.stanford.edu/library>
 - American Library Association: Copyright at a Glance
<http://www.ala.org/washoff/copyrightataglance.html>
 - The UT system Crash Course in Copyright
<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm>
 - U.S. Copyright office Home Page
<http://lcweb.loc.gov/copyright>
 - MEL: Laws Affecting Libraries
<http://mel.org/libraries/LIBS-laws.html>
 - Copyright Information for the University of Michigan
<http://www.lib.umich.edu/copyright/>
 - MLC – Library Copyright Information
<http://mlcnet.org/services/copylinks.php>

V. Confidentiality and Record

Copyright permissions for course packs and anthologies are kept by the Luther Book Shop for 10 years.