

WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE
COPYRIGHT GUIDELINES

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Any and all references to U.S. Copyright Act, and related sections and applicable laws, can be found at <http://www.copyright.gov/title17/>. Links to specific sections mentioned are provided throughout when a link is provided by the Copyright Act itself.

SECTION 1. GENERAL

- 1.1 Scope: This document summarizes United States Copyright laws and provides guidelines for the standardized use of copyrighted works by WVSOM faculty, students, staff, administrators and volunteers in a manner compliant with Title 17 U.S. Code, the United States Copyright Act, the Digital Millennium Copyright Act of 1998, and the TEACH Act.
- 1.2 Authority: WVSOM Institutional Policy E-40
- 1.3 Effective Date: January 16, 2010 (last revised N/A)

SECTION 2. PURPOSE

- 2.1 The purpose of the West Virginia School of Osteopathic Medicine (WVSOM) Copyright Guidelines are to summarize United States Copyright laws and provide guidance for the standardized use of copyrighted works by WVSOM faculty, students, staff, and administrators in a manner compliant with Title 17 U.S. Code, the United States Copyright Act, the Digital Millennium Copyright Act of 1998, and the TEACH Act.
- 2.2 Every student, faculty member, and employee of WVSOM (from here forth "WVSOM community") is expected to comply with U.S. Copyright Law and the guidelines of use established under the authority of WVSOM Institutional Policy E-40, Copyright.
- 2.3 The intended end result of compliance with federal laws and guidelines is to foster the promotion of scientific and medical discovery while encouraging WVSOM community members toward responsible use of copyrighted materials for research, teaching, and service activities.

SECTION 3. BASIC PRINCIPLES AND SCOPE OF COPYRIGHT LAW

- 3.1 **General:**
 - 3.1.1 Copyright laws protect original works in a variety of formats, including but not limited to books, photographs, music, drama, architectural drawings, and sculpture.
 - 3.1.2 The Copyright Act grants the copyright owner, with a few limited exceptions, exclusive rights to make copies, create derivative works, distribute, publish, display,

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or perform the work publicly. The limited exceptions that apply to educational, academic settings are as follows:

- 3.1.2.1 Section 107, fair use
- 3.1.2.2 Section 110, face-to-face teaching
- 3.1.2.3 Section 110, distance-learning exception
- 3.1.2.4 Section 109, first-sale doctrine
- 3.1.2.5 Section 108, library and archives exception

Each of these exceptions will be outlined later for clarity in *Section 4. Academic Exceptions to Copyright*.

- 3.1.3 If there are no exceptions, seek permission. Works published or created after 1989 need not have copyright notice to be protected by copyright, and copyright protection begins once an original work is created in a tangible form. Unless an exception to copyright is posted, assume that the work is copyrighted and seek permission as appropriate.

3.2 Public Domain Works:

Copyrighted works eventually age into the public domain. Public domain works are available for use without copyright stipulation. In summary, public domain timeframes are as follows:

- 3.2.1 Works published before 1923 have matured to public domain.
- 3.2.2 Works published between 1923 and 1963 are protected for 95 years from their publication date, although the copyright may have been renewed or may still receive protection under another country's laws.
- 3.2.3 Works published between 1963 and 1978 are protected for 95 years.
- 3.2.4 Since 1978, "life plus 70", meaning, life of author plus 70 years is the standard term of copyright.
- 3.2.5 Some works are excluded from copyright protection. For example, United States government works and databases of facts are excluded, but not county and local government works.

3.3 Penalties for Copyright Infringement:

- 3.3.1 Infringement is a federal offense, and fines and penalties range from \$200 to \$150,000 per instance, and may include sentencing of a prison term for some violations.
- 3.3.2 WVSOM students, faculty, and employees are expected to act within the parameters of U.S. Copyright Laws and academic exceptions as outlined in these guidelines.

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WVSOM does not assume legal responsibility for any WVSOM community members who fail to comply with copyright law or WVSOM policy.

- 3.3.3 All WVSOM community members are responsible for reviewing supporting materials incorporated into curricular, co-curricular, staff, promotional marketing, and administrative materials and works, and applying proper attribution and copyright/licensing compliance as required. Assistance for such compliance by WVSOM community members will be available through the WVSOM Copyright Compliance Office.

SECTION 4. ACADEMIC EXCEPTIONS TO COPYRIGHT

4.1 Section 107. Limitations on exclusive rights: Fair use <http://www.copyright.gov/title17/92chap1.html#107>.

4.1.1 The Fair Use provision of the U.S. Copyright Act provides a broad platform for possible copyright exceptions for criticism, comment, news reporting, teaching, scholarship, or research use. The Fair Use Doctrine is broad by design to allow analysis on a case-by-case basis and determine reasonable use of copyrighted works, where context and situation are critical elements to be weighed against the four factors of fair use. The four factors are:

- 4.1.1.1 Nature of use: commercial or nonprofit, educational
- 4.1.1.2 Nature of the work used
- 4.1.1.3 Amount and substantiality of portion used
- 4.1.1.4 Economic effect: potential market effect of value of copyrighted work

4.1.2 Copyright exceptions argued under the fair use umbrella should be based on well-reasoned judgments of good faith which weigh all four fair use factors in determining fair use.

4.1.3 The following fair use guidelines are strongly recommended:

- 4.1.3.1 Use the smallest portion of copyrighted work to communicate or illustrate a point.
- 4.1.3.2 Cite and attribute properly all integrated resources.
- 4.1.3.3 Establish a clear link between the work used and educational objectives.

4.1.4 WVSOM Copyright Guidelines suggests the use of Safe Harbor Fair Use Guidelines as defined by the *Agreement on Guidelines for Classroom Copying*, which was authored by representatives of the educational community and publishers in 1976 and made part of the Congressional Record.¹

¹ House Report No. 1476, 94th Cong., 2d Sess. 47 (1976) reprinted in 1976 U.S.C.C.A.N. 5681-88.
<http://www.copyright.gov/circs/circ21.pdf>.

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- 4.1.5 Additionally, the widely accepted Conference On Fair Use (CONFU) Guidelines limit fair use of copyrighted materials in educational multi-media projects to two years; after that, permission must be obtained before using the project again.²
- 4.1.6 Visit the [Classroom Use](#) section of WVSOM Copyright Guidelines to see a summary of the Safe Harbor Fair Use Guidelines.
- 4.1.7 Note also that terms of license agreements trump fair use, and must be adhered to in using licensed materials.
- 4.2 **Section 110. Limitations on exclusive rights: Exemption of certain performances and displays** <http://www.copyright.gov/title17/92chap1.html#110>.
 - 4.2.1 Copyright exceptions for use of motion picture, audiovisual, and nondramatic literary or musical copyrighted materials in face-to-face teaching and digital learning environments are discussed in Section 110(1) and Section 110(2) of U.S. Copyright Law, respectively.
 - 4.2.2 Section 110 carefully defines face-to-face teaching, and the exception applies only when all of the following criteria are met:
 - 4.2.2.1 Use of the material must take place in a non-profit educational institution;
 - 4.2.2.2 The materials utilized must be directly related to and supportive/illustrative of curricular content of a systemic course: entertainment, recreation, or cultural value of audience do not qualify;
 - 4.2.2.3 Reception of the material is solely for students officially enrolled in the course; and
 - 4.2.2.4 The performance or display of materials occurs under the direction or supervision of an instructor of the course during a regularly scheduled course session.
 - 4.2.3 Section 110(1) permits teachers and students of an accredited, nonprofit educational institution to display or perform any copyrighted work, even in its entirety, during the course of face-to-face instruction.
 - 4.2.4 Section 110(2) permits performance of non-dramatic literary or musical works as part of distance learning under specific conditions set forth in Section 110; however, Section 110(2) prohibits such performances of dramatic or audiovisual works. Use of copyrighted materials during distance learning has been re-examined since Section 110(2); see *Distance Learning Exception* section of WVSOM Copyright Guidelines.

² The Copyright Crash Course, *Fair Use Guidelines for Educational Multimedia*, (University of Texas System, Intellectual Property, Office of General Counsel, 2001), <http://www.utsystem.edu/OGC/IntellectualProperty/ccmcguid.htm> (accessed Nov. 14, 2009).

4.2.5 The face-to-face exception rules out co-curricular and extra-curricular use of such works, as well as public performance. Any use outside of narrow definition of face-to-face instruction exception should be analyzed for fair use exception and to determine whether the showing is considered public or private. Any use determined to be a public performance showing will require a legal license for display or performance.

4.3 Distance Learning Exception: Section 110(2) revisited, DMCA, and the TEACH Act

4.3.1 Distance learning is defined as an educational process of instruction delivered to students beyond the parameters of the campus or primary physical location of instruction. Instructional delivery often involves the use of one or more telecommunication technologies, and some courses are at times a mix of distance and traditional face-to-face instruction.

4.3.2 Examples of distance learning technologies include both analog and digital means and include telecourses, cable television systems, microwave and Instructional Television Fixed Services (ITFS), compressed and full-motion video, fiber optic networks, interactive videodisks, and computer networks.

4.3.3 The Distance Learning exception currently relies on interpretation of U.S. Copyright Law Section 110(2), the Digital Millennium Copyright Act (DMCA), and the TEACH Act. The DMCA addresses issues that have developed since Sec 110(1) and Sec. 110(2) of U.S. Copyright law addressed the performance and use of copyrighted works for learning purposes in the classroom. The DMCA re-examined the restrictions set forth in Sec. 110 (2) that did not permit the use of performance of dramatic or audiovisual works in the distance learning context. DMCA guidelines suggested instead to grant the same rights to instructors of distance education courses to the same guidelines granted to those engaged in fact-to-face instruction.³

4.3.4 The DMCA retains portions of Sec. 110 (1 & 2) such as the criteria that define face-to-face instruction, and in a statement from the Register of Copyrights to the Committee on the Judiciary, the recommendation is made on the behalf of the Copyright Office to “emphasize the concept of mediated instruction” and “maintain existing standards of eligibility” regarding the definitions of students and non-profit educational institutions, and the use of copyrighted materials in supporting a defined curricular point. To maintain balance between fair use, educational objectives, and the rights of copyright holders, the same report also recommends expanding the categories of works allowed but with greater restrictions than those set forth in Section 110(2). Recommended restrictions include locking down the ability to

³ The Copyright Crash Course, *Educational Fair Use Guidelines for Distance Learning*, (University of Texas System, Intellectual Property, Office of General Counsel, 2001), <http://www.utsystem.edu/OGC/IntellectualProperty/distguid.htm> (accessed Nov. 18, 2009).

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produce another copy of the work, and retention of an uploaded copy only for the duration of the course.⁴ In addition, adoption of the DMCA for use by an educational institution is reliant upon compliance with a specific set of requirements.⁵

4.3.5 The TEACH Act (Technology, Education, and Copyright Harmonization Act), signed by President Bush in 2002, facilitates the use of copyrighted materials for distance education and use in content management systems, whether the enrolled student is accessing from on-or-off-campus locations. The TEACH Act requires accredited non-profit educational institutions meet the following criteria:

4.3.5.1 Use must be part of mediated instruction limited to a specific number of students enrolled in a specific course.

4.3.5.2 Use may be live or asynchronous.

4.3.5.3 Use cannot include textbook materials, materials typically purchased or acquired by students, or works developed specifically for online uses.

4.3.5.4 Only reasonable and limited portions of materials may be used.

4.3.5.5 The institution must include notice of copyright on online materials, and have copyright policies informing the students that course content may be copyright protected.

4.3.5.6 Technological measures beyond password protection must be in place to ensure compliance with these policies, such as print-disabling, cut and paste disabling, and IP checking.⁶

4.3.6 The DMCA can be reviewed by visiting

<http://www.copyright.gov/legislation/hr2281.pdf>.

A summary may be found at <http://www.copyright.gov/legislation/dmca.pdf>.

4.3.7 The TEACH Act can be reviewed by visiting

<http://thomas.loc.gov/cgi-bin/query/F?c107:1:/temp/~c107L5PcJO:e484087:>

A summary may be found at the Copyright Clearance Center website:

<http://www.copyright.com/Services/copyrighoncampus/basics/teach.html>.

4.4 **Section 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord** <http://www.copyright.gov/title17/92chap1.html#109>.

4.4.1 Also known as the first-sale doctrine, section 109 specifies that the owner of a legally obtained, copyright protected item may lend, sell, rent, give or throw away that item

⁴ Statement of Marybeth Peters, The Register of Copyrights before the Committee on the Judiciary, *Copyright and Digital Distance Education*, May 25, 1999; United State Senate 106th Congress, 1st Session, <http://www.copyright.gov/docs/regstat52599.html> (accessed Dec. 1, 2009).

⁵ Campus Guide to Copyright Compliance, *Copyright Basics: The Digital Millennium Copyright Act* (Copyright Clearance Center, 2005); <http://www.copyright.com/Services/copyrighoncampus/basics/dmca.html> (accessed Dec. 10, 2009).

⁶ Campus Guide to Copyright Compliance, *Copyright Basics: The TEACH Act*, (Copyright Clearance Center, 2005); <http://www.copyright.com/Services/copyrighoncampus/basics/teach.html> (accessed Nov. 24, 2009).

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without permission of the copyright owner. For the educator, this right includes the right to lend or give away a copy of a book, DVD, or other item.

4.4.2 Note, however, that the following are excluded from First-sale doctrine exceptions:

- 4.4.2.1 Musical recordings
- 4.4.2.2 Items covered under software licenses
- 4.4.2.3 Posting of digital content

4.5 **Section 108. Limitations on exclusive rights: Reproduction by libraries and archives**

<http://www.copyright.gov/title17/92chap1.html#108>.

4.5.1 Section 108 includes a set of exemptions for libraries or archives regarding reproductions either by patrons of the library or library employees themselves. Regardless of who makes the copies, the copy must be done for non-commercial purposes.

4.5.2 The exemption states that a library or archive open to the public, or whose collections are available to researchers outside the institution, is not responsible for unsupervised reproduction that violates copyright, provided the following proper notice is displayed prominently in locations where copies may be made (such as the photocopy machine):

4.5.2.1 ***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 specified 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 to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

4.5.3 When copies are requested by patrons from library staff, the following must be adhered to:

- 4.5.3.1 The warning notice must be notably placed near the name and signature line of the person requesting the item.
- 4.5.3.2 The library may make only one copy per patron.
- 4.5.3.3 Copying for a patron must be for purposes of private study, scholarship, or research.
- 4.5.3.4 All copies must include the actual copyright notice of the item, or stamped with the following notice:

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4.5.3.4.1 *This material may be protected by copyright law (Title 17 U.S. Code). 17 USC S 108(a).*

4.5.4 Reproduction exceptions for archival purposes must adhere to the following:

4.5.4.1 Unpublished works: no more than three (3) copies for preservation/security measures or deposit for research use in another library or archives if the following criteria are met:

4.5.4.1.1 The reproduction is currently part of the library or archival collection.

4.5.4.1.2 Digital formats are not otherwise re-distributed and are not made available to the public outside the premise of the library or archive.

4.5.4.2 Published works duplicated exclusively for replacement of an item damaged, deteriorating, lost, stolen, or whose format is becoming obsolete; no more than three (3) copies for preservation/security measures or deposit for research use in another library or archives if the following criteria are met:

4.5.4.2.1 Item cannot be replaced at a fair price.

4.5.4.2.2 Digital formats are not otherwise re-distributed and are not made available to the public outside the premise of the library or archive.

SECTION 5. APPLYING COPYRIGHT LAWS TO EVERYDAY CAMPUS USE

5.1 General

5.1.1 Although educational use exceptions to U.S. Copyright Law are open to well-reasoned, careful interpretation on a case-by-case basis, certain guidelines have been established by consensus of interested parties that provide a "safe harbor." While guidelines are not law, they often serve the purpose of reducing the risk of legal action and providing a framework for analysis. This section is organized around several such commonly accepted guidelines.

5.1.2 The guidelines are provided to the WVSOM community for standardization of safe harbor and/or as a foundation for analysis beyond the scope of use provided by the guidelines. In some cases, these standards can be reasoned and weighed against other exception factors that impact the educational setting, resulting in deviations from the guidelines may be acceptable in some well-reasoned cases. Please contact the WVSOM Copyright Office for assistance in determining variations of use beyond the guidelines as needed.

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- 5.1.3 NOTE: Use of licensed material also often varies from terms of copyright and related guidelines/exceptions; please consult terms of licensing agreements when using licensed materials.

5.2 Classroom Use

5.2.1 Classroom Copying Fair Use Guidelines: Books and Periodicals

The following guidelines for classroom copying by non-profit educational institutions were established as the minimum standards of educational fair use under § 107 of H.R. 2233. There may be instances where copying for use in the classroom legitimately exceeds the minimal amounts established by this guideline.^{7\}

5.2.2 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 the copying meets the following tests of **brevity**, **spontaneity**, and **cumulative effect**. Each copy must also include prominent notice that it is copyrighted material.

5.2.2.1 Brevity

- 5.2.2.1.1 Prose: Either (1) a complete article, story or essay of less than 2,500 words, or (2) 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.
- 5.2.2.1.2 Poetry: (1) A complete poem if less than 250 words and if printed on not more than two pages, or (2) an excerpt of not more than 250 words. (Each of the numerical limits above may be expanded to permit the completion of an unfinished prose paragraph or line of a poem.)
- 5.2.2.1.3 Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue.
- 5.2.2.1.4 Special Works: Certain works in poetry or prose or in "poetic prose," which may combine language with illustrations and which fall short of 2,500 words, may not be reproduced in their entirety. However, an excerpt comprising not more than two of the published pages of such a work, and containing not more than 10% of the words found in the text, may be reproduced.

⁷ House Report 94-1476, *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals*, Ad Hoc Committee on Copyright Law Revision, March 19, 1976; available University of Minnesota website <http://www.lib.umn.edu/copyright/classguide.phtml> (accessed Dec. 9, 2009).

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5.2.2.2 Spontaneity

The copying is at the inspiration of the individual instructor 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.

5.2.2.3 Cumulative Effect

- 5.2.2.3.1 The copying of the material is for only one course in the school in which copies are made.
- 5.2.2.3.2 Excepting current newspapers and news periodicals:
 - 5.2.2.3.2.1 Not be more than nine instances of such multiple copying for one course during a term.
 - 5.2.2.3.2.2 Not more than one short poem, article, story, essay or two excerpts may be copied from neither the same author, nor more than three from the same collective work or periodical volume during a term.
- 5.2.2.3.3 Copying shall not be used to create or replace anthologies, compilations, or collective works.
- 5.2.2.3.4 There shall be no copying of works intended to be consumable, such as workbooks, test booklets, etc. No charge shall be made to the student beyond the actual cost of copying.
- 5.2.2.3.5 Copying shall not substitute for the purchase of books, reprints or periodicals.
- 5.2.2.3.6 Copying should not be repeated with respect to the same item by the same teacher from term to term.

5.2.3 Educational Multimedia Classroom or Networked Presentation Guidelines:

- 5.2.3.1 The following Educational Multimedia Guidelines were developed during the CONFU process and have been endorsed by hundreds of information and publishing organizations, individual companies, and U.S. government agencies such as the U.S. Copyright Office, U.S. Patent and Trademark Office, and the NEA.⁸
- 5.2.3.2 Education multimedia are works that include students' and/or educators' original material together with one or more various media formats such as motion media, music, photographs, citations from texts, digital software, and other multi-media materials, which may or may not be copyrighted or licensed.

⁸ *The Conference on Fair Use: Final Report to the Commissioner on the Conclusion of the Conference on Fair Use*, November 1998, (U.S. Patent and Trademark Office, September 1998), <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf> (accessed Dec. 1, 2009).

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- 5.2.3.3 Student use of their own educational multimedia projects allows for the following:
 - 5.2.3.3.1 Use in educational course for which the project was created;
 - 5.2.3.3.2 May be used in personal portfolios for personal use such as graduate school interviews and job applications.
- 5.2.3.4 Educator use of educational multimedia works can be used in the following settings:
 - 5.2.3.4.1 Curricular:
 - 5.2.3.4.1.1 Face-to-face instruction,
 - 5.2.3.4.1.2 Directed self-study of students,
 - 5.2.3.4.1.3 Synchronous and asynchronous remote instruction, including post-class review of material, to students if provided over the institution's secure electronic network.
 - 5.2.3.4.1.3.1 Technological safeguards must provide not only password protection to the network and multimedia project, but also must lock down the ability to copy the materials contained within the multimedia project.
 - 5.2.3.4.1.3.2 If technological safeguards cannot be implemented, access to the project must be limited to a maximum of 15 days after the synchronous or asynchronous assignment involving the project. Only two copies of the project may be stored after the time limit, accessible only in a learning resource center, library, or similar place of access for enrolled students.
 - 5.2.3.4.2 Peer Conference: Acceptable at workshops, conferences, or similar with peer educators.
 - 5.2.3.4.3 Personal Portfolio: Acceptable for educator to retain a copy for personal professional portfolio use.
- 5.2.3.5 All educational multimedia projects must adhere to the following time limits, proportion guidelines, and additional criteria:

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- 5.2.3.5.1 Time restriction: not to exceed two (2) years after the first use in with a class; additional use requires copyright clearance of incorporated copyrighted materials.
- 5.2.3.5.2 Portion limits are assessed in aggregate and cumulatively for either educator's or student's works for a given academic term. Defined by format of copyrighted item, the portion limits are as follows:
 - 5.2.3.5.2.1 Text: 10% or 1,000 words (whichever is less) of the original work, entire poem if less than 250 words but not to exceed more than three (3) of a given poet, and not to exceed five (5) by different poets from an anthology.
 - 5.2.3.5.2.2 Music, music video, lyrics: No more than 30 seconds total of a song, lyrics, or video.
 - 5.2.3.5.2.3 Data sets: up to 10% or 2,500 fields or cell entries (lesser of the two).
 - 5.2.3.5.2.4 Photos, illustrations: Complete photo or image may be used, but no more than five (5) images by an artist/photographer; if photo or illustration is from a collective work, no more than 10% or 15 images (whichever is less).
 - 5.2.3.5.2.5 Motion media: 10% or three (3) minutes (whichever is less).
- 5.2.3.5.3 Additional criteria:
 - 5.2.3.5.3.1 All multimedia elements incorporated must be legally acquired.
 - 5.2.3.5.3.2 All incorporated elements must be properly attributed, whether protected by licensing, copyright, or available in the public domain. Copyright notice © and ownership must also be displayed if applicable.
 - 5.2.3.5.3.2.1 Attribution (including copyright notice) may be combined and displayed in a separate section of the project (appendix, final page of "credits" or references) except in the case of images, which must have attribution incorporated into image or appear next to the image, on the same viewable page.
 - 5.2.3.5.3.2.2 If for testing purposes or similar such placement is problematic, the image and attribution may be temporarily hidden.

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- 5.2.3.5.3.3 No more than two (2) copies of a project may be retained, including the original; one copy may be kept on reserve in a location accessible to students (library, learning resource center).
- 5.2.3.5.3.4 Multimedia project may not be posted more than 15 days past assigned use date.
- 5.2.3.5.3.5 Opening screen of multimedia projects, and any accompanying print material, must include notice that certain materials may be subject to copyright, and are included under fair use exemptions; further reproduction is restricted.
- 5.2.3.5.3.6 Altering of some copyrighted and/or licensed material allowed but must be noted and must support instructional objectives.
- 5.2.3.5.3.7 Remember: licensed materials often fall outside the scope of these guidelines. Determine if the media incorporated is licensed and use according to terms of license.

5.2.4 Taping of Television, Radio Broadcasts: Educational Guidelines

5.2.4.1 The following Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes are derived from H.R. 97-495, pages 8-9, and were developed by a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. A summary may be found in *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians* <http://www.copyright.gov/circs/circ21.pdf>.

5.2.4.2 An instructor may tape a television or radio broadcast for classroom use under the following guidelines:

- 5.2.4.2.1 Instructional use only (linked to curriculum, not entertainment).
- 5.2.4.2.2 Must be recorded during broadcast of the radio or TV show.
- 5.2.4.2.3 Must be broadcast free of charge.
- 5.2.4.2.4 Whole broadcast must be recorded and unaltered.
- 5.2.4.2.5 Recording may not be retained longer 45 days past recording.
- 5.2.4.2.6 Recording may be used only once per class during the first 10 instructional days of the 45 day retention period; use after the 10th day for instructor purposes only.

5.3 Beyond The Classroom

5.3.1 Interlibrary loans (ILL):

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The National Commission on New Technological Uses of Copyrighted Works (CONTU) provided the following guidelines to the U.S. Senate and House Committees regarding subsection 108(2) of U.S. Copyright Law and library interlibrary loans. These guidelines, agreed upon by those Committees and other interested library, publisher, and author organizations, provide a framework for the most commonly occurring interlibrary loan photocopying situations. A summary may be found in *Circular 21: Reproduction of Copyrighted Works by Educators and Librarians* <http://www.copyright.gov/circs/circ21.pdf>.

5.3.2 The Rule of Five:

- 5.3.2.1 In a given calendar year, a requesting entity may not fill more than five (5) requests for articles published within the past five (5) years from a given periodical title for which they do not subscribe.
- 5.3.2.2 In a given calendar year, a requesting entity may not fill more than five (5) requests for a title of a given text, poem, or item during the duration of the copyright of the work. Requests exceeding Rule of Five be filled provided copyright clearance fees are appropriately secured and paid.
- 5.3.2.3 Requests may only be filled by a supplying entity when the request is accompanied by a statement regarding conformity to copyright and/or CONTU guidelines; conversely, when requesting to borrow an item from another library, WVSOM Library must supply such statement on its own requests to the lending library. Such statement of conformity must be on all requests regardless of how the requests are sent: fax, mail, or electronically.
 - 5.3.2.3.1 For requests of articles published in the past five (5) years, CONTU Notice shall be: *This request complies with CCG Guidelines.*
 - 5.3.2.3.2 For requests of articles published more than five (5) years ago, Copyright Compliance Notice shall be: *This request complies with CCL.*

5.3.3 Additional Criteria for ILL under CONTU Guidelines:

- 5.3.3.1 Borrowing activity records must be retained for three (3) years for all CCG requests.
- 5.3.3.2 Display Warning of Copyright must be posted prominently where orders for copies and/or ILL's are accepted.
- 5.3.3.3 Order Display Warning of Copyright must be posted on all request forms used by the patron to place an ILL request with the library; such

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notice must be next to the patron name and signature line of the ILL request form.

5.3.3.4 Display Warning of Copyright in both instances must be verbatim as below:

5.3.3.4.1 **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 specified conditions is that the photocopy/reproduction is NOT TO BE "USED FOR ANY PURPOSES 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 to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law. By submitting this request, I certify that I have read the copyright warning on this form.

SECTION 6. ADMINISTRATIVE, CIVIL AND CRIMINAL LIABILITIES

6.1 Administrative Liabilities

- 6.1.1 WVSOM requires that all campus constituents comply with federal copyright law (see WVSOM's [Copyright Policy E-40](#)) and maintain acceptable use of WVSOM's information technology resources (see WVSOM's [Acceptable Use Policy GA-31](#)). WVSOM does not tolerate unauthorized use or distribution of copyrighted material.
- 6.1.2 Unauthorized use or distribution of copyrighted material, including but not limited to unauthorized peer-to-peer file sharing and illegal downloading, using WVSOM's information technology system may subject those individuals to administrative action, up to and including termination of employment or dismissal from WVSOM. WVSOM's [Acceptable Use Policy GA-31 Section 13.11](#) specifically prohibits any activity that would be related to copyright infringement, including illegal downloading and peer-to-peer file sharing.

6.2 Civil and Criminal Liabilities

- 6.2.1 Unauthorized use or distribution of copyrighted material, including unauthorized peer-to-peer file sharing and illegal downloading, may subject those individuals to civil and criminal liabilities.
- 6.2.2 Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws
 - 6.2.2.1 Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under

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section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

- 6.2.2.2 Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.
- 6.2.2.3 Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.
- 6.2.2.4 For more information, please see the website of the U.S. Copyright Office at www.copyright.gov, especially the FAQ's at www.copyright.gov/help/faq.