

### UNIVERSITY COPYRIGHT POLICY

Dakota Wesleyan University is an institution committed to learning, leadership, faith, and service and believes that the exchange of ideas is the foundation of scholarship. As part of the exchange of ideas DWU requires that all members of the campus community abide by existing copyright laws (i.e., the United States Copyright Law of 1976, as amended [Title 17, U.S. Code]; the Digital Millennium Copyright Act of 1998; and the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002). DWU prohibits any duplication of materials not specifically allowed under existing copyright laws, fair use doctrine, or license agreements without explicit permission of the copyright holder. However, in the case of willful infringement of a copyright holder's rights, liability rests with the individual requesting the duplication, not those performing the work or DWU.

### PURPOSE

The purpose of the Dakota Wesleyan University Copyright Policy is to provide a summary of United States copyright laws as they relate to the use of copyright protected works as well as to provide guidelines on the processes and procedures for lawful practice and use of copyrighted materials to facilitate the work of students, faculty, and employees. Every student, faculty member and employee of the University is expected to comply with this policy.

### COPYRIGHT LAW

Copyright law protects the expression of an idea; it does not protect ideas, data or facts. Copyright law provides creators and distributors of creative works with an incentive to share their works by granting to them the right to be compensated when others use their works in certain ways. Specific rights are granted to the creators of creative works in the U.S. Copyright Act (title 17, U.S. Code). Generally, if you are not a copyright holder for a particular work, as determined by the law, you must obtain copyright permission prior to reusing or reproducing that work.

There are specific exceptions in the Copyright Act for certain academic uses. Permission is never required for certain other actions, such as reading or borrowing original literary works or photographs from a library collection. The rights granted by the Copyright Act are intended to benefit "authors" of "original works of authorship," including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations.

Copyright law provides copyright holders with control over the use of their creations and the ability to benefit, monetarily and otherwise, from the use of their works. The owner of a copyright has exclusive rights to do and to authorize third parties to do any of the following:

1. Reproduce the copyrighted work in copies or phonorecords;
2. Prepare derivative works based upon the copyrighted work;
3. Distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, perform the copyrighted work publicly; and
5. In the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, display the copyrighted work publicly.

Copyrights are not always owned by the author or creator of the work. For example, authors often agree to assign their copyright to the publisher of their work. Even the author of a work will have to obtain permissions from the copyright holder if they do not retain some rights to reproduce, distribute, perform, display or prepare derivative works as a part of their agreement with the publisher.

In the U.S., the general rule of copyright duration for a work created on or after January 1, 1978 is the author's life plus 70 years after the author's death. This is often referred to as "life-plus-70". Works created by companies or other types of organizations generally have a copyright term of 95 years.

### FAIR USE

The provision for fair use is found in the Copyright Act at Section 107. Under the fair use provision, a reproduction of someone else's copyright-protected work may be considered fair if it is used for criticism, comment, news reporting, teaching, scholarship or research. If the reproduction is for one of these purposes, then a determination of fair use will be based upon four factors:

1. The purpose and character of use (principally, whether for commercial or nonprofit educational use);
2. The nature of the copyright-protected work;
3. The amount and substantiality of the portion used; and
4. The effect of the contemplated use on the potential market for or value of the copyright-protected work.

While fair use is intended to apply to teaching, research, and other such activities, a crucial point is that an educational purpose alone does not make a use fair. The purpose of the use is in fact only one of four factors that users must analyze in order to conclude whether or not an activity is lawful.

### **SPECIAL COPYRIGHT PROVISIONS FOR ACADEMIA**

The Copyright Act contains specific exceptions for the use of copyright-protected materials by academic institutions. These provisions include:

- Section 107 on fair use, which is discussed above.
- Section 108 on reproduction by libraries and archives, which applies to activities such as archiving; replacing lost, damaged or obsolete copies; patron requests for entire works; and interlibrary loans.
- Section 109 on first sale, which permits the resale or lending of copies of works, providing the basis for library lending and the sale of used books.
- Section 110 on the use of materials in an educational setting, which permits certain types of content use in the classroom and in distance education.  
(<http://www.copyright.com/Services/copyrighoncampus/basics/index.html>)

### **TECHNOLOGY, EDUCATION, AND COPYRIGHT HARMONIZATION (TEACH) ACT**

In 2002, the Copyright Law was amended to include an exemption for the instructional use of copyrighted works for digital distance education by an accredited non-profit educational institution. To take advantage of this exemption, Dakota Wesleyan University is required to institute policies regarding copyright and provide informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the copyright laws of the United States. Faculty and staff must provide notice to students that materials used in connection with the course may be subject to copyright protection. To use copyrighted works in digital distance education, the following conditions also must be met:

The works must fall into one of the following categories:

- Performances of nondramatic literary works or
- Performances of nondramatic musical works or
- Performances of reasonable portions of any other work or
- Display of any other work in an amount comparable to that typically displayed in a live classroom setting

The works may not be:

- Digital educational works (works produced or marketed primarily for performance/ display as part of mediated instructional activities transmitted via digital networks) or
- Unlawful copies (copies you know or reasonably should know were not lawfully made or acquired)

The works must be used:

- By, at the direction of, or under the actual supervision of an instructor, and
- As an integral part of a class session, and
- As part of systematic mediated instructional activities, and
- Directly related to and of material assistance to the teaching content

Additional stipulations include:

- Transmission is made solely for and reception limited to (as technologically feasible) students enrolled in the course, and
- Downstream controls are instituted:

- Technological measures that reasonably prevent retention of materials in accessible form for longer than a class session
- Unauthorized further dissemination in accessible form, and
- No interference with copyright holder's technological measures that prevent such retention and dissemination

Analog copies may be converted to digital as long as:

- No digital version is available to the institution or
- The available digital version is technologically protected to prevent TEACH uses

If your use does not meet the above criteria and the work is protected by copyright, you must obtain permission to use the work from the copyright holder or its agent. If the copyright holder is not listed on the work, identifying the appropriate person or entity to contact regarding permission may take some investigative and creative work.

### FILE SHARING

The sharing of commercially copyrighted products, without appropriate payment to the rights holders, is blatantly illegal and will not be tolerated at Dakota Wesleyan. Moreover, the installation of such peer-to-peer file sharing applications on computers connected to the university network also invites covert installation of viruses, spyware, adware, and other unwanted and potentially pernicious programs. See the DWU [File Sharing Policy](#) for a comprehensive list of such products.

Use of file-sharing products for the illegal sharing and reproduction of copyrighted materials is a violation of this policy and is subject to the penalties prescribed therein, even if the infringement was unintentional. All members of the Dakota Wesleyan community are expected to exercise sound judgment and stay within the limits of the copyright law when using file-sharing applications.

### POLICY ON USING DWU LOGOS, PHOTOGRAPHS, AND GRAPHICS

All text, graphics, and photographs contained in official Dakota Wesleyan University publications (including web pages) are the intellectual property of DWU unless otherwise indicated. Redistribution and commercial use are prohibited without permission. All DWU logos, graphics, and photographs are subject to licensing. For information about obtaining permission or an appropriate license, contact the Department of Marketing and Communications.

### CONSEQUENCES OF COPYRIGHT INFRINGEMENT

Infringement of another person's copyright is a violation of federal law. The legal ramifications of infringement include fines that range from \$200 to \$150,000 per infringement and/or prison.

Dakota Wesleyan University faculty and staff members are responsible for complying with copyright law and University copyright policy, and for making a good faith determination of whether an intended use falls within the fair use exemption. Dakota Wesleyan will not assume legal responsibility for faculty or staff members who fail to make a good faith determination or otherwise do not comply with University copyright policy or copyright law.

Instructors are responsible for reviewing and vetting their course content for copyright compliance; if asking other staff to process the content, faculty should be able to provide evidence of either copyright compliance or a good faith determination.

Students are also responsible for complying with copyright law, the University copyright policy, and acting responsibly and ethically in applying fair use principles to the completion of their activities and projects. Dakota Wesleyan University will not assume legal responsibility for violations of applicable copyright law by students.

### GUIDELINES AND BEST PRACTICES

[Best Practices](#) (American University School of Communication, Center for Social Media)

[The Code of Best Practices for Academic and Research Libraries](#) (ARL, January 2012)

[Copyright & Fair Use: Charts and Tools](#) (Stanford University)

[Copyright Term and the Public Domain in the United States](#) (Cornell University)

[Know Your Copy Rights](#) (Knowyourcopyrights.org)

[Obtaining Permission to Use Copyrighted Materials](#) (Purdue University Copyright Office)

[U.S. Copyright Law: A Guide for Music Educators](#) (National Association for Music Education)

**Legal Reference: Copyright Revision Act of 1976, Pub. L. No. 94-553, 17 U.S.C.**

Adapted from Portland State University's Copyright Policy with permission.

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**REVISED: January 2006, July 1, 2016**

**REVIEWED:**