Loyola Notre Dame Library Copyright Policies

Purpose

The mission of the Loyola Notre Dame Library is to provide the information services and resources required to support the academic programs and educational concerns of Loyola University Maryland and Notre Dame of Maryland University. The library seeks to fulfill this mission while also complying with copyright law. The purpose of this copyright policy is to outline guidelines for common uses of copyrighted materials within the Loyola Notre Dame Library as it seeks to fulfill its mission.

Unmediated Copying

Section 108 of the 1976 Copyright Law of the United States states that a library, archives, or its employees cannot be held liable for copyright infringement that occurs during "the unsupervised use of reproducing equipment located on its premises: Provided, That such equipment displays a notice that the making of a copy may be subject to the copyright law.” As such, the Loyola Notre Dame Library will display the following notice on its public copying equipment including copiers, printers, and scanners.

“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.”

Interlibrary Loan

The following policies govern Interlibrary Loan (ILL) requests at the Loyola Notre Dame Library both as the borrowing library and lending library.

1. Only Loyola Notre Dame Library staff and Loyola University Maryland and Notre Dame of Maryland University faculty, staff, and currently-enrolled students may use ILL.
2. Interlibrary loan requests are governed by Section 108 of the Copyright Law of the United States and guidelines developed by the National Commission on New Technological Uses of Copyright Works (CONTU).
3. There is no charge to the requestor for ILL services, and the requestor may keep any journal content received.
4. The following copyright statement is displayed and must be agreed to when creating an Interlibrary Loan account with the Loyola Notre Dame Library.

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 materials.

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

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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.

5. Interlibrary Loan (ILL) requests will comply with CONTU guidelines such that:
   a. The library will not request and distribute copies of copyrighted works if it has notice that the copy will be used for anything other than private study, scholarship, or research purposes.
   b. No more than five copies of articles from a periodical title (not an issue) per calendar year will be requested without paying royalties. However, this limitation does not apply to articles published six or more years before the date of the request. The library will attempt to obtain articles exceeding these limits by other means as indicated in 5f.
   c. No more than five excerpts from a book or pamphlet will be requested while it is subject to copyright protection without paying royalties. The library will attempt to obtain book excerpts and pamphlets exceeding these limits by other means as indicated in 5f.
   d. The above limitations do not apply if: the library has ordered a subscription to the periodical; the library owns the work but the copy is lost, stolen, or otherwise unavailable when the reproduction is requested; or the library has ordered the title but it has not arrived.
   e. The library will maintain records of filled orders which must be kept for three years after the end of the calendar year.
   f. The library will pay royalties or costs up to $75 to obtain a copy through services other than ILL that are compliant with intellectual property laws for any copy that exceeds suggested limits referred to in sections 5b and 5c.

6. Materials may be copied and distributed through interlibrary loan when they are:
   a. in the public domain; or
   b. used with permission from the copyright holder; or
   c. used under the provisions of a contract or license agreement, noting that agreements may differ from, and often take precedence over, what is allowed under copyright law; or
   d. used under the provisions of Library Copying, Section 108 of the Copyright Law of the United States or, to the extent possible for University-related instructional or scholarly purposes, under Fair Use, Section 107 of the Copyright Law of the United States, as outlined in the Classroom Guidelines, or as determined using a case-by-case four-factor analysis.

7. When acting as the lending library the Loyola Notre Dame Library will abide by the following policies:
   a. Determination of overall copyright compliance for requests from other libraries is the responsibility of the requesting library. The Loyola Notre Dame Library will only fulfill requests that indicate copyright compliance.
   b. The library will not make and distribute copies of copyrighted works if it has notice that the copy will be used for anything other than private study, scholarship, or research purposes.
   c. Copies made will display a notice stating that the work may be protected by copyright and, when available, the notice of copyright that appears on the original work.

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Reserves

There are no specific guidelines in the Copyright Law of the United States that refer to the practice of reserve services in libraries. The following policies are based on Fair Use as outlined in Section 107 of the Copyright Law of the United States and standards of practice across academic libraries. All reserve services at Loyola Notre Dame Library are conducted in support of course-related teaching at Loyola University Maryland and Notre Dame of Maryland University.

Print Reserves

1. Print reserve requests may be made by instructors at Loyola University Maryland or Notre Dame of Maryland University.
2. Books, videos, or journal articles may be placed on print reserve.
3. The book, video, or journal must be owned by the Loyola Notre Dame Library or be a legally owned personal copy of the instructor, department, or university. Interlibrary Loan materials may not be placed on reserve.
4. There is no charge to instructors or students for print reserves.
5. The library retains the right to refuse materials for reserve, or remove materials already on reserve, on the basis of law-related or administrative concerns.

E-Reserves

1. E-reserve requests may be made by instructors at Loyola University Maryland or Notre Dame of Maryland University.
2. Portions of books, journal articles, or other online materials may be placed on e-reserve.
3. The material must be owned or licensed by the Loyola Notre Dame Library or a legally owned personal copy of the instructor, department, or university. Interlibrary Loan materials may not be placed on e-reserve.
4. There is no charge to instructors or students for e-reserves.
5. Reserve requests for materials (such as journal articles or e-books) that are accessible via licensed library databases will be provided as links to these materials in the databases subject to any restrictions in the database license agreements.
6. For materials that are not accessible via online databases and are still under copyright: instructors are responsible for evaluating on a case-by-case basis whether their reserve request qualifies as a fair use. (Instructors should use the fair use checklist found on the Loyola Notre Dame Library Copyright Guide to help make their determination. They may contact Danielle Whren Johnson at dwhren@loyola.edu or dwhren@ndm.edu or 410-617-6872 for further help making a fair use determination.)
7. Instructors may only request the amount of the material needed to accomplish their specific educational purpose.
   a. Typically, use should be limited to no more than 10% of a book with no chapters or fewer than 10 chapters, or for a book of 10 or more chapters, 1 chapter or one article per journal issue.
   b. Use may exceed the above standards with a well-reasoned fair use argument.
8. If none of the above options apply, the library will obtain permission to use the item as long as the royalties do not exceed $200 per course per semester.

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9. Materials placed on e-reserve will only be searchable by Instructor, Department, and Course number.
10. Materials placed on e-reserve will be password restricted to currently enrolled students at Loyola University Maryland and Notre Dame of Maryland University and their instructors.
11. All materials placed on e-reserve will contain the copyright notice for the original work. If no notice is available they will contain a notice stating that the work may be protected by copyright.
12. Materials will be removed to an off-line archive at the end of each semester. Faculty may request to reuse materials prior to each semester the materials are needed.

**Streaming Media**

Section 110(2) of the Copyright Law of the United States as amended by the TEACH Act allows for the digital transmission of “reasonable and limited portions” of films. However, the criteria for applying Section 110(2) are stringent and the Loyola Notre Dame Library does not meet the criteria. Therefore streaming videos must either meet fair use criteria as laid out in Section 107 of the Copyright Law of the United States or be licensed from the copyright holder.

1. Streaming media requests may only be made by instructors at Loyola University Maryland or Notre Dame of Maryland University.
2. Requests for streaming media will be approved if instructors own the copyright to the materials. If instructors do not own the copyright to the materials then a fair use evaluation will be made.

Under a fair use evaluation:

3. All materials must be owned or licensed by the library. Personal or departmental copies of videos cannot be converted to streaming. The library may acquire media for streaming upon request subject to fund availability and collection development policies.
4. License agreements must not restrict the conversion of media to a streaming format.
5. Instructors must complete the streaming media fair use evaluation check list including providing pedagogical relevance of the media to their course.

If the request meets the criteria laid out in steps 3-5, then the media will be provided in a streaming format subject to the following restrictions:

6. Links to streaming media located on the library’s password protected server will be provided to faculty members.
7. Links to streaming media files must be placed in a password protected course management system such as Moodle or Joule.
8. Files will only be made available for the duration of the class for which they were requested.
9. Requests must be made for each semester the material is needed.
10. Faculty, staff, and students may not copy, redistribute, modify and/or archive any of the files streamed for course use.
11. The library reserves the right to reject or remove any requests not in compliance with the streaming media policy.

If the materials do not meet the criteria for streaming under fair use:

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12. Then the library will investigate licensing options for streaming the media. Whether or not media will be licensed is dependent upon terms of the license (including cost and length of the license) and available funds.

13. If the materials are not available under a streaming license then the media will not be streamed.

### Video and Public Performance Rights

Copyright Law of the United States requires that all videos displayed outside of the home, or at any place where people are gathered who are not family members, such as in a school, library, auditorium, classroom, or meeting room must have public performance rights. Public performance rights are a special license that is either purchased with a video or separately from the video to allow the video to be shown outside of personal home use. This statute applies to all videos currently under copyright. This includes videos that have been purchased, borrowed from the library, or rented from a video store or services like Netflix.

According to Copyright Law of the United States (Title 17, United States Code, Section 110) instructors or students who are displaying the video in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction do not require public performance rights. However, any other public display of video on campus outside of use in a specific course, including by student or faculty groups, requires a public performance license.

The library video collection does include some videos that were purchased with public performance rights. Library owned videos from the following vendors already have public performance rights and may be shown to groups without any additional licensing.

- Aims Multimedia (formerly The Media Guild, a subsidiary of Discovery School)
- Ambrose Video
- Annenberg Media
- Bullfrog Films, Inc.
- California Newsreel
- Cinema Guild
- Clearvue & SVE (a subsidiary of Discovery School)
- Direct Cinema Ltd.
- Discovery School (a subsidiary of Discovery Education; also owns Aims Multimedia and Clearvue & SVE)
- Docurama (a subsidiary of New Video Group, Inc.)
- Fanlight Productions
- Film Movement
- Films for the Humanities & Sciences
- Frameline
- Pyramid Media/Pyramid Films
- Schlessinger Media
- Weston Woods
- Women Make Movies

Other videos purchased by the library may have public performance rights included. Contact Danielle Whren Johnson at 410-617-6872, dwhren@loyola.edu, or dwhren@ndm.edu regarding individual videos.
obtained from vendors other than those listed above. Note that feature films (i.e. Hollywood movies) will never come with public performance rights.

Proof that a public performance license for use has been obtained is required to show a video in the library that does not already have public performance rights included.

The following licensing companies sell public performance rights.

- Criterion Pictures USA, Inc.
- Kino International Corp.
- Milestone Film & Video
- Modern Sound Pictures
- Motion Picture Licensing Corporation (MPLC)
- New Yorker Films
- Swank Motion Pictures, Inc.

Format Conversion

LIBRARY EXEMPTIONS UNDER §108

According to Section 108 of the Copyright Law of the United States libraries have the right to reproduce materials under the following conditions:

“(c). the right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost or stolen, or if the existing format in which the work is stored has become obsolete, if

1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and
2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside of the library or archives.”

Based on the ARL-Code of Best Practices in Fair Use for Academic and Research Libraries and the Video at Risk: Preserving Commercial Video Collections in Research Libraries report the Loyola Notre Dame Library will reproduce media materials under the following conditions:

1. A member of the Loyola University Maryland or Notre Dame of Maryland University community must request that an item be converted to a newer format. Wholesale conversions of the collection will not be made.
2. The library will conduct a search for an unused replacement of the item in a newer format.
   a. If the item is available to purchase unused in a new format then the library will not make a reproduction of the item and will make a decision to purchase the item based on collection development policies.
   b. If the item is not available to purchase unused in a new format then the library will further evaluate the request to see if it meets the criteria for reproduction found in either Section 107 (Fair Use) or Section 108 of Copyright Law of the United States.
3. If the item meets the criteria laid out in 2b and is also damaged, deteriorating, lost or stolen, or is stored in an obsolete format* then the library will make a replacement copy based on Section 108. In the case of obsolete formats the replacement copy will be made in a newer format.

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4. If the item meets the criteria laid out in 2b and is not also damaged, deteriorating, lost or stolen, or is stored in an obsolete format then the library will conduct a fair use analysis according to the criteria laid out in Section 107 of Copyright Law of the United States to determine if a reproduction replacement copy will be made.

5. If a replacement copy of an item is made:
   a. Full attribution will be listed on the copy.
   b. The original copy will be withdrawn from the collection.
   c. Only Loyola Notre Dame Library staff and Loyola Notre Dame Library patrons directly affiliated with Loyola University Maryland or Notre Dame of Maryland University will be allowed to use the replacement copy outside of the library premises. The general public and other Loyola Notre Dame Library patrons will only be granted access to the replacement copy for use within the library.

*Despite the fact that Loyola University has removed VCRs from classrooms on campus, VHS currently does not qualify as obsolete as combination VCR/DVD players are still being manufactured and sold. Thus, any reproductions of VHS tapes that are not damaged, deteriorating, lost or stolen would need to be done under the auspices of Fair Use as outlined in Section 107 of the Copyright Law of the United States. However, this could change in the near future requiring alterations to the current policy.

Digital Collections

Electronic Dissertations and Theses

Several graduate degree programs at Loyola University Maryland and Notre Dame of Maryland University require their students to deposit an electronic copy of their dissertations or theses with the library.

As part of this requirement the student must sign the following agreement:

“The author will grant Loyola Notre Dame Library Inc. the non-exclusive license to archive and make accessible, under the conditions specified, the thesis, dissertation, or project report in whole or in part in all forms of media, now or hereafter known. The author retains all other ownership rights to the copyright of the thesis, dissertation, or project report. The author also retains the right to use in future works (such as articles or books) all or part of the thesis, dissertation, or project report.”

Students will also elect the level of access granted to their electronic dissertations and theses by choosing either

- Access by Library’s basic constituency: students, faculty, and staff of Loyola University Maryland and Notre Dame of Maryland University; students, faculty, and staff of the members of the Maryland Interlibrary Consortium; and walk-in patrons.
- World wide distribution via the internet.

While every effort has been made to ensure the information in this policy is accurate, the content of this document is not intended to constitute, and receipt of it does not constitute, a contract for legal advice or establishment of a legal relationship.

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