

Copyright in an Electronic Age
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What is Copyright?

Five Fundamental Rights: Reproduction, Adaptation, Publication, Performance, and Display

What is Fair Use?

- A legal principle that defines the limitations on exclusive rights of copyright holders that applies to only non-profit educational institutions and homebound instruction

Can you pass the Fair Use Test?

Fair Use Factor #1

- The purpose and character of use - including whether such use is of a commercial nature or is for nonprofit educational purposes, criticism, comment, news reporting, teaching, scholarship, research

Fair Use Factor #2

- The nature of the copyrighted work - is it intended for educational use?; nonfiction materials are easier to claim than creative works; entertainment is less likely to be eligible for fair use

Fair Use Factor #3

- The amount and substantiality of the portion used in relation to the copyrighted work as a whole - varies with original format copying of entire work is rarely fair use

Fair Use Factor #4

- The effect of the use upon the potential market for or value of the copyrighted work

Photocopying Fair Use:

- A teacher can make a single copy of: book chapter, magazine or newspaper article, picture from a book, magazine, or newspaper for scholarly research or for use in teaching or preparation
 - Exception: copyrighted, syndicated cartoon characters
 - Multiple Copies: A teacher can make multiple copies for the classroom of:
 - poem of less than 250 words an excerpt from larger work up to 1,000 words or 10% whichever is less
 - complete article, story, or essay less than 2,500 words
 - one graphic or picture per book or issue
 - combinations of prose, poetry, and illustrations up to 10% of total
 - must bear copyright notice
 - Exception: children's/picture books less than 2,500
 - excerpt no more than two pages
 - may not contain more than 10% of total words
 - Conditions
 - may not exceed one copy per pupil
 - the use is spontaneous and there is not enough time to contact copyright holder for permission
 - Thou Shall Not
 - copy consumable materials such as workbooks, exercises, standardized tests, test booklets, and answer sheets
 - substitute copy for purchase
 - make new copies of the same original over and over
 - be directed by higher authority to make illegal copies

Audiovisual Works Fair Use (sound recordings, video and film)

Rental of videotapes for classroom use

Fair Use

- "Guidelines for Off-the-Air Recording of Broadcasting Programming for Educational Purposes" - adopted by Congress in 1981 all use of legally obtained video recordings in classrooms
- "Home Use Only" 1985 interpretation by the NC Attorney General:
 - use is allowed under a specific exemption is found in Section 110 (1) of the Copyright Statute
 - "performance or display of a work by instructors or pupils (be) in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction..."

Suggested Guidelines

- Rent tapes in school's name
- Where rental agreements, contracts, or rental cards are used, insist that such agreement be in the school's name
- Assure the rented tape will be for instruction, not entertainment or reward

Commercial television programs - Fair Use guidelines

- broadcast programs are defined as television programs transmitted by television stations for reception by the general public without charge
- broadcast programs may be:
 - recorded and retained for a period of 45 calendar days from the date of recording
 - used once by individual teachers in course of relevant teaching activities
 - used with students only during first 10 school days
 - repeated once only during the first 10 school days when reinforcement is necessary in classroom
 - used after first 10 days only by a teacher for evaluation purposes
 - school days are defined as - school session days not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions within the 45 retention days
 - made only at request of and used by individual teachers
- broadcast programs must be erased at the conclusion of the retention period
- broadcast programs may not be regularly recorded in anticipation of requests
- no program may be recorded for an individual teacher more than one time regardless of number of times it is broadcast
- a limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under fair use guidelines (subject to same provisions as original)
- recording need not be used in their entirety
- recordings may not be altered from their original content
- recordings may not be physically or electronically combined or merged into teaching anthologies or compilations
- all recordings must include the copyright notice
- educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines

Guidelines for Microcomputer Software

- 1980 amendment to 1976 Copyright Act defined computer programs
- Unauthorized duplication constitutes infringement whether done for sale, free distribution, or copier's own use
- Up to 5 years in prison and \$250,000 fine for each violation
- Liability usually falls on party owning the computer
- Rental, leasing, or lending of software is illegal without permission of copyright owner under Public Law 101-650

Fair Use for Microcomputer Software

- With 2 exceptions, software does not fall under fair use:
 - 1 backup may be kept for archival purposes only (backup copy must be destroyed when rights to program cease)
 - 1 copy may be created on the computer's hard drive in order to make the program operate

Software License

- You don't buy software, you borrow it
- Read the license for options

Computer graphics (paintings, photos, diagrams, charts, line drawings, etchings)

You may:

- make a single copy for personal research
- make multiple copies IF:
 - the test of spontaneity is met
 - the copy is used in only one course
 - the copying does not occur more than nine times per course
 - no more than one graphic is used per book

What is Adaptation?

- you may NOT enlarge, modify, convert to different medium
- school staff who allow equipment to be used for copyright infringement is considered a contributory infringer

Multimedia Guidelines

Students and teachers must include on the opening screen of their programs and on any printed materials that their presentation has been prepared under fair use exemption of the U.S. Copyright Law and are restricted from further use.

Educators may claim fair use for their own productions providing these productions are:

- for face-to-face curriculum-based instruction
- demonstrations of how to create multimedia productions
- presented at conferences (but you may not share copies of the actual production)
- for remote instruction as long as the distribution signal is limited and it is kept for only 2 years

How much text may I use in a multimedia presentation?

- up to 10% of a copyrighted work or 1000 words, whichever is less
- poems
- entire poem if less than 250 words
- 250 words or less if longer poem
- no more than 5 poems (or excerpts) of different poets, from an anthology
- only 3 poems (or excerpts) per poet

How much motion media (video, animation) or how many photographs may I use in a multimedia presentation?

- up to 10% of a copyrighted work or 3 minutes, whichever is less
- clip cannot be altered in any way

How many photographs may I use in a multimedia presentation?

- a photograph or illustration may be used only in its entirety
- no more than 5 images of an artist's or photographer's work may be used
- when using a collection, no more than 10% or 15 images, whichever is less

How much music may I use in a multimedia presentation?

- up to 10% of a copyrighted musical composition, but no more than 30 seconds
- up to 10% of a body of sound recording, but no more than 30 seconds
- any alterations cannot change the basic melody or the fundamental character of the work

May I copy and distribute my, or my students', multimedia presentations?

- do not post multimedia projects claiming fair use exemption on an unsecured web site
- no more than 2 copies of the original production may be made
- only 1 may be placed on reserve for others to use for instructional purposes

- an additional copy may be made for preservation purposes, but may be used or copied only to replace a used copy that has been lost, damaged, or stolen
- if more than one person has created the multimedia presentation, each principle creator may retain only one copy

Can I change a multimedia file and use it?

- multimedia selections falling within the above guidelines may be altered only to illustrate a specific technique or to support a specific instructional objective
- notation of the alteration should be documented within the presentation

Do I have to cite files used in multimedia presentations?

- citations - educators and students must credit sources, giving full bibliographic information available and display the copyright notice and copyright ownership information if this is shown in the original source.
- copyright information for images may be shown in a separate bibliographic section unless the presentation is being used for distance learning. In this case, the information must be incorporated within the image itself (i.e. it must appear on the screen when the image is viewed).

Additional Resources

Simpson, Carol. Copyright for Schools: A Practical Guide for Schools, Third Edition. Worthington: Linworth, 2001

Becker, Gary H. Copyright: A Guide to Information and Resources, Second Edition. Lake Mary, 1997

Tyre, Terian. "Their Cheatin' Hearts." *District Administration*, Vol. 37, No. 10 (October 2001): 32-35.

Useful Copyright Web Sites

10 Big Myths about copyright explained
 American Library Association Copyright Tutorial
 Association for Information Media and Equipment (AIME)
 Copyright in an Electronic Age
 Copyright Kids
 The Copyright Website
 Cut and Paste Plagiarism
 Groton Public Schools Media Technology Services
 Internet School Library Media Center, James Madison University
 The Instructors' Guide to Internet Plagiarism
 U.S. Copyright Office
 University of Texas

URL

www.templetons.com/brad/copymyths.html
www.ala.org/ala/washoff/WOissues/copyrightb/
<http://www.aime.org/links.php>
www.ncwiseowl.org/Professional/Conferences/Copyright.doc
www.copyrightkids.org/cbasicsframes.htm
www.benedict.com/
alexia.lis.uiuc.edu/%7Ejanicke/plagiarism.htm
www.groton.k12.ct.us/mts/cimhp01.htm
falcon.jmu.edu/~ramseyil/copy.htm
www.plagiarized.com
www.lcweb.loc.gov/copyright/
www.utsystem.edu/ogc/intellectualproperty/offsite.htm