

UNDERSTANDING COPYRIGHT IN THE DIGITAL AGE

A Guide for Educators

Understanding the Law

US Copyright Law dates back to the original Constitution when Congress enacted Title 17 to "*promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive rights to their respective Writings and Discoveries.*"

Copyright protection begins as soon as a work is fixed in a tangible medium. Works do not have to be registered with the US Copyright Office to be protected, nor must they include the copyright symbol (©). Currently, copyright protection lasts 70 years beyond the life of the author of the work.

Copyright protection actually consists of six separate rights:

- Reproduction
- Derivation
- Distribution
- Performance
- Display
- Digital transmission of sound recording

Authors may retain, sell or give away any or all of these rights.

Damages for Copyright Infringement

A copyright holder may sue for infringement and seek the following:

- Temporary or permanent injunction
- Impoundment of infringing copies
- Destruction of infringing copies
- Actual monetary damages to owner
- Profits gained by infringer
- Court costs and attorney's fees
- Statutory damages (\$30,000 - \$150,000 per infringement)

What is not protected?

Works in the public domain are not copyright protected and therefore permission is not required for their use. Works in the public domain include:

- Works for which the copyright has expired
- Works for which the copyright was lost
- Works produced by a federal government employee produced within the scope of employment
- Works clearly and explicitly donated to the public domain
- Works which lack sufficient originality to qualify for copyright (i.e. telephone book, calendars, maps, etc.)

Exemptions for Education

The law provides several exemptions for the use of copyrighted work for educational purposes. Sections 107 and 110 deal with educational exemptions. The most cited (and misunderstood) of these exemptions is the Fair Use Doctrine.

Section 107 – The Fair Use Doctrine

The Fair Use Doctrine allows *limited* use of protected materials without requiring permission from the copyright holder. Use of protected works is limited to criticism, comment, news reporting, teaching, scholarship or research. There are not “hard and fast” rules concerning Fair Use. If contested, each case is evaluated separately. Four factors are considered when establishing Fair Use.

1. The purpose and character of the work
 - Fair use applies to non-profit educational purposes.
2. The nature of the work
 - Creative works receive more protection than factual works.
3. The amount of the work used
 - Use the smallest amount possible to achieve educational objective. The larger the amount one uses, the less likely it will be considered fair use.
4. The potential market impact
 - Use cannot interfere with copyright holder’s ability to profit. Determination is made on potential (not actual) market impact. Courts tend to weigh this factor more heavily than others.

Section 110 – Classroom Exemptions for Performance and Display

This exemption allows for the performance or display (not reproduction) of protected works as part of instruction in a non-profit educational setting.

The performance or display must take place in a classroom or other place normally devoted to instruction. Performances and displays may be transmitted under certain circumstances. Only nondramatic musical works and nondramatic literary works may be performed in their entirety. NOTE: Copies of audio-visual works used under this exemption must be legally obtained.

The Technology, Education and Copyright Harmonization Act of 2001 (Section 110 (2))

The TEACH Act updated Section 110 to expand the scope of educators’ rights for the purposes of digital distance education. However, there is still a gap between what is permitted in face-to-face instruction and distance delivery.

- Audio-visual and dramatic musical works must be shown as clips. (Entire performance are not permitted.)
- Works may be digitized for distance education ***only if they are not already available in digital format.***
- Displays must be comparable to what is used in face-to-face instruction.
- Materials must be technologically limited to students enrolled in the class.
- The institution must apply technological measures to prevent recipients from retaining and distributing protected works.

The Committee on Fair Use – CONFU Guidelines

In 1997, ninety-three organizations consisting of nonprofit publishers, the software industry, government agencies, scholars and scholarly societies, authors, artists, and others convened to find agreement on the scope of fair use in various electronic contexts. The Committee was unable to come to consensus or adopt official guidelines. However many educators follow the proposed CONFU guidelines in their practice. These guidelines are just that – guidelines – and do not carry the weight of the law. However, most entities accept the guidelines as “reasonable” measures to protect the rights of copyright owners.

Under the CONFU guidelines, students and teachers may use portions of lawfully acquired copyrighted works in the development of educational multimedia projects. Limitations of time, portion, copying and distribution apply.

Time

Educators may use their multimedia projects for educational purposes for up to two years. After two years, permission is required. Students may use their multimedia projects for the course in which they are enrolled, and for later personal uses such as portfolio evidence for job or graduate school interviews.

Portion

- Motion media – 10% or 3 minutes (whichever is less)
- Text – 10% or 1000 words (whichever is less); an entire poem, up to 250 words, but no more than three poems by one poet.
- Music, lyrics and music video – 10% but not more than 30 seconds of an individual music work.
- Illustrations and photographs – may be used in its entirety, but no more than 5 images by an artist.
- Numerical data sets – 10% or 2500 fields or cell entries (whichever is less)

Copying and Distribution

Only a limited number of copies are permitted, generally only two. In the case of jointly created projects, each creator may retain one copy.

NOTE - Educators and students must credit sources and display the copyright notice and ownership information for all works incorporated in educational multimedia projects.

General Guidelines for Educators

When considering the use of protected material consider the following:

- Is the intended use for non-profit educational purposes?
⇒ *If no, then reconsider the use of the work.*
- Have you used the smallest portion possible to achieve the instructional objective?
⇒ *If no, consider reducing the amount of the work used.*
- Will the use of the work have an adverse impact of the potential market for the work?
⇒ *If yes, do not use the work without permission from copyright holder.*
- Are you making the least amount of copies possible for the lesson?
⇒ *If no, limit copies to one per student.*
- If using electronic media, are you taking technological measures to prevent further retention and distribution of the work?
⇒ *Check with your institution for network settings.*
- Is the inspiration and decision to use the work and the moment of its use so close that it would be unreasonable to expect a timely reply to a request for permission?
⇒ *If yes, use the work once, and then seek permission for future uses.*
- Have you acknowledged the copyright holder?
⇒ *If not, be sure to include appropriate citation in your work.*

For more information, visit these websites:

US Copyright Office (Library of Congress)

<http://www.copyright.gov/>

University of Texas Crash Course in Copyright

<http://www.utsystem.edu/OGC/intellectualProperty/cprtindx.htm>

University of Maryland University College

<http://www.umuc.edu/library/copy.shtml>

Stanford University Libraries

<http://fairuse.stanford.edu/>

Copyright Use Tutorial (NC State Libraries)

<http://www.lib.ncsu.edu/scc/tutorial/copyuse/index.html>