



Copyright Law For Educators

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What is Copyright?

- Copyright is a legal protection for the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works.

Berne Convention Implementation Act of 1988

- U.S. entered Berne Union, the largest International Copyright Convention.
- Had to change U.S. Copyright Law to be in compliance, such changes include:
 - No longer need to provide copyright notice for protection;
 - Doubled limits of statutory damages; and
 - Recognized architectural plans as copyrightable.

What Works are Protected?

- Work must be fixed in a tangible form of expression.
- The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device.

What Works are Protected?

- Must be an original work of authorship.
- The U.S.'s required level of originality is very low.

Copyright Basics: Copyrightable Works

- Eight categories of copyrightable works:
 1. literary works;
 2. musical works, including any accompanying words;
 3. dramatic works, including any accompanying music;
 4. pantomimes and choreographic works;
 5. pictorial, graphic, and sculptural works;
 6. motion pictures and other audiovisual works;
 7. sound recordings; and
 8. architectural works.

Factual Information

- Purely factual information within a work is not protected by copyright.

Utilitarian Works

- Utilitarian aspects of a work are not protected by copyright.
- Example:
 - Design features of a car may exist apart from the function it performs.

Works from Pre-existing Works

- Compilations
- Derivative Works

Not Protected

- Works that have not been fixed in a tangible form of expression.
- Titles, names; familiar symbols or designs; mere listings of ingredients or content.
- Ideas, procedures, concepts, principles.
- Works containing no original authorship.

Not Protected

- Works in the public domain
 - Works are in the public domain if the copyright on the work has expired or the works were never copyrighted at all (under the prior law).
 - Works published before 1923.
- Federal government publications

Not Protected

- *Feist Publications, Inc. v. Rural Telephone Service, Co.*, 499 US 340 (1991)
 - Listing of names, towns and telephone numbers in white pages cannot be protected by copyright
 - Protection possible if arranged in an original way

Limitations and Exceptions

- First sale doctrine
- Special exceptions for libraries, archives, and teaching (fair use guidelines)
- Certain statutory licenses
- Certain television and radio exceptions
- Single software copy for archival purposes

Exclusive Rights

- Reproduction
- Derivative Works
- Distribution
- Public Performance
- Public Display

When Does Protection Begin?

- Copyright protection is secured automatically upon creation
- No publication or registration is required

Registration

- A copyright owner must:
 - File an application;
 - Pay a nominal filing fee (\$65 paper, \$35 online); and
 - Deposit copies of the work at the Copyright Office (unpublished one copy, published two copies).

Benefits of Registration

- In the U.S., one must register in order to be able to bring suit in federal court for infringement.
- Pre-requisite for obtaining statutory damages and attorneys' fees.

Notice

- No notice is required.
- Forms of notice: ©, the word “Copyright,” or the abbreviation “Copr.”, year of publication, and name of the copyright owner.

Duration of Copyright

- Works created on or after 1/1/78
 - Life of author plus 70 years
 - Works made for hire: shorter of
 - 95 years from publication or
 - 120 years from creation

Ownership

- Copyright initially belongs to the individual authors
- Joint authors are co-owners of the copyright in joint works
- Under the work-made-for-hire doctrine, the employer is the owner of the copyright for works created within the scope of employment

Copyright – Author

- The person who creates the work is not always the author of the work. The author is either:
 - the person who creates the work;
 - the employer of the person who creates the work; or
 - the person or business that commissions the work under a valid work for hire contract under very limited circumstances.

Works for Hire

- A work prepared by an employee within the scope of his or her employment.
 - *Community for Creative Non-Violence v. Reid*, 490 U.S. 730 (1989)
 - Control over the work, not the “Work” (e.g. location, tools)
 - Control over the employee (e.g. schedule, hours, benefits, tax withholding)

Common Ownership Disputes

- Websites
- Software
- Photographs
- Advertising materials

Online Copyright Disputes

- Copying on websites – 17 U.S.C. § 512
- Immunity for online service providers (website operators, intermediaries)
 - Takedown notice
 - Removal of material
 - Counter-notice
 - 10 day period for copyright owner to file suit
 - If no suit filed material restored.

Elements of Copyright Infringement

- Validity and ownership of a copyright
- Wrongful copying of protected expression

Proving Infringement

- Direct evidence of infringement
or
- Circumstantial evidence of infringement:
 - Access to plaintiff's copyrighted work
 - Unlawful copying as evidenced by substantial similarity



Fair Use

- “Fair use” is not an infringement of copyright. May qualify as fair use for purposes such as:
 - Criticism
 - Comment
 - News reporting
 - Teaching
 - Scholarship
 - Research

Four Factor Test

- The purpose and character of the use - commercial use or nonprofit educational use
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market for or value of the copyrighted work

Fair Use Checklist

- Does the use infringe exclusive rights protected by copyright?
- Is the use of the work “commercial” or for nonprofit purposes such as criticism, commentary, education, or news reporting?
- Is the use “transformative,” bringing new expressive meanings to the copyrighted material?
- Does the use impact an existing market for the work, or one that is likely to be exploited in the future?
- How much of the copyrighted material is being used?

Fair Use Analysis

- *American Geophysical Union v. Texaco*, 60 F.3d 913 (2nd. Cir. 1994)
- Purpose and Character of Use
 - Public benefit or commercial gain?
 - Indirect economic advantage?
 - Does the use add something new (is it transformative)?
- Nature of the copyrighted work
 - Factual or expressive
 - Court found the work was factual

Fair Use Analysis

- **Amount and substantiality of portion used**
 - Each article in the journal was a separate original work
- **Effect on the potential market**
 - Would Texaco have to purchase additional works if it could not copy the articles?
 - Would Texaco have to purchase a photocopying license (e.g. CCC)?
- **Aggregate Assessment**
 - Three of the four factors favored the publisher, “including the important first and fourth factors”.
 - Texaco’s use was not a fair use and Texaco should have purchased a license or additional copies for its researchers

Fair Use for Teachers

- Make sure the use is for education, not entertainment. Use needs to be germane to the instruction of the topic.
- Make sure you legally obtain the copy.
- When possible, use factual works, but when necessary, creative works can be used to illustrate a point or as a basis for criticism or commentary. You may also use excerpts from periodicals.

Fair Use for Teachers

- Use of copyright-protected material should not be a substitute for students purchasing textbooks or other books readily available in the market place, such as course packs.
- Your use should not dilute the market or potential income of the copyright holder.
- Licensing agreements supersede copyright. For example, computer software comes with separate licensing agreements that put limits on uses, precluding “fair use” provisions.

Single Copies for Teachers

- A single copy of a chapter from a book
- A single copy of an article from a periodical or newspaper
- A single of a short story, short essay, or short poem
- A chart, graph, diagram, picture or cartoon from a book, periodical or newspaper

But do not:

- Create your own anthology or book from “pieces” gathered
- Copy from works that are “consumable” like workbooks, exercises, tests
- Substitute copying for purchasing
- Copy the same item from term to term
- Make copies of copyrighted, syndicated cartoon characters

Multiple Copies for Classroom use

- Can make only one copy for each student in the class
- Each item copied must be for classroom use or discussion
- Each copy must include a notice of copyright (it can be simple)
- Teachers must actually use the copies

Three Tests for Copying

- **Test 1: Brevity**

- Poetry – All, if less than 250 words. If longer than 250 words, only 250 words can be copied.
- Prose – All, if less than 2,500 words. For other, no more than 1,000 words or 10%, whichever is less.

Three Tests for Copying

- **Test 2: Spontaneity**
 - The individual teacher must initiate the making of multiple copies.
 - The decision to copy must be close to the time of use. Otherwise, permission must be requested.

Three Tests for Copying

- **Test 3: Cumulative Effect**
 - Copying must be done for only one course.
 - Limits – generally 3 or fewer items from a collective work; 3 or fewer items from one periodical volume.
 - No more than 9 items may be copied in multiples per course during one class term.
 - Current news articles from newspapers or magazines are exempt from this.

Is Content on the Internet Copyrighted?

- Yes – everything on the Internet is copyrighted.
- Documents on the Web (and other digital formats) are easier to reproduce and distribute, but that does not change the copyright.
- Digital content is still content – and thus copyrighted. Copying or reproducing without permission may be illegal.



Internet, continued

- Notification of copyright status is not required, but remember that Web-based materials are copyrighted just as print and audiovisual materials are.
- Large portions of documents, images and Web sites must not be taken without permission.
- Small portions (as with print materials) can be used by teachers in the classroom.
- Many Web pages grant permission to educators automatically – look for the terms of use.
- If in doubt, request permission to use – usually an e-mail address is posted on the site.

Is Linking to Something on the Web a Copyright Violation?

- No – a hyperlink from one Web page to another is not a copy of the original work.
- You are not required to request permission to link to a Web page.

Audiovisuals

- The same fair use guidelines that apply to print materials DO NOT apply to audiovisuals.
- Producers worry about unauthorized copies and unauthorized performances of protected works.
- Multiple copyrights usually involved, making permissions more difficult.

Performance and Display: Fair Use Criteria

- Performance in nonprofit educational institution;
- Performance is used for face-to-face teaching;
- Performance is presented by instructors or pupils;
- Performance takes place in a classroom or similar place for instruction (including the library); and
- Performance is of legally acquired (purchased or legally copied) copy of the work.

What are the Restrictions?

- Conditions of use
- Length of time they may be kept
- Limitations on size or portion copied, for ex:
 - Motion media—up to 3 minutes or 10%, whichever is less.
 - Music, lyrics, music videos—up to 10% of the original work, but no more than 30 seconds; and no alterations.

Examples

- Google image search
 - Image displayed in classroom
 - Image displayed on website

Examples

- Consumables and other materials marketed to educators
 - Effect on the market

Public Domain Resources

- All types of media:
 - Creative Commons – www.creativecommons.org
 - Wikimedia Commons – www.commons.wikimedia.org
 - U.S. Government works.



Public Domain Resources

- **Images:**

- Pixabay – www.pixabay.com
- Pixzoyd – www.pixxoyd.com
- Snappygoat – www.snappygoat.com

Public Domain Resources

- Music:
 - Musopen – www.musopen.org

Public Domain Resources

- Books:
 - Project Gutenberg – www.gutenberg.org

Permissions

- If uncertain, ask permission.
- Make requests far enough in advance – a month to 6 weeks. For Internet information, a week should suffice.
- Send request to correct party. Research through Library of Congress Copyright Office: <http://www.loc.gov/copyright>

Copyright Remedies

- Actual damages
- Statutory damages (\$750 - \$30,000 per work)
- Injunctions, including temporary and permanent
- Impounding infringing copies
- Destroying infringing copies
- Attorneys' fees and costs

Questions?