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Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web

The copyright protections that we normally associate with print also govern the use of audio, video, images, and text on the Internet and the World Wide Web (WWW). The intuitive interface of the WWW makes it easy for the computer user to copy and use images, text, video and other graphics that are likely to be protected by copyright. A document may be copyrighted even if it does not explicitly state that it is copyrighted. As a result, it is a good idea to assume materials such as documents, images, or video clips are copyrighted. Educators can avoid copyright violations and legally use copyrighted materials if they understand and comply with the fair use guidelines. If you believe, after you review this document, that your proposed use does not comply with fair use guidelines, you always have the option to ask for permission from the copyright holder.

An Introduction to Copyright

What Is Copyright?

Simply put, "copyright is a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used." Stephen Fishman, Esq. *The Copyright Handbook*, 1996.

The intent of copyright is to advance the progress of knowledge by giving an author of a work an economic incentive to create new works.

What Can be Copyrighted?

Tangible, original expression. This means, for example, that a verbal presentation that is not recorded cannot be copyrighted. However, anything that is tangible can be copyrighted. There are three fundamental requirements for something to be copyrighted:

- Fixation:

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- The item must be fixed in some way. The fixation may be just about anything. For example, a piece of paper, a computer disk, a audiotape, or a videotape are all legitimate forms of fixation.
- Originality:
 - The work must be original. Originality includes a novel or a student's e-mail message to a professor. Both are considered examples of original expression.
 - It is not necessary for the work to be completely original. Works may be combined, adapted, or transformed in new ways that would make them eligible for copyright protection.
- Minimal Creativity:
 - The work must include something that is above and beyond the original. Verbatim use is not considered original. Reference to the original work that is used to discuss a new concept would be considered original, however.
 - Creativity need only be extremely slight for the work to be eligible for protection.

An Introduction to Fair Use

What is Fair Use?

Fair use is the most significant limitation on the copyright holder's exclusive rights. Deciding whether the use of a work is fair IS NOT a science. There are no set guidelines that are universally accepted. Instead, the individual who wants to use a copyrighted work must weigh four factors:

The purpose and character of the use:

- Is the new work merely a copy of the original? If it is simply a copy, it is not as likely to be considered fair use.
- Does the new work offer something above and beyond the original? Does it transform the original work in some way? If the work is altered significantly, used for another purpose, appeals to a different audience, it more likely to be considered fair use.
- Is the use of the copyrighted work for nonprofit or educational purposes? The use of copyrighted works for nonprofit or educational purposes is more likely to be considered fair use.

The nature of the copyrighted work:

- Is the copyrighted work a published or unpublished works? Unpublished works are less likely to be considered fair use.
- Is the copyrighted work out of print? If it is, it is more likely to be considered fair use.
- Is the work factual or artistic? The more a work tends toward artistic expression, the less likely it will be considered fair use.

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The amount and substantiality of the portion used:

- The more you use, the less likely it will be considered fair use.
- Does the amount you use exceed a reasonable expectation? If it approaches 50 percent of the entire work, it is likely to be considered an unfair use of the copyrighted work.
- Is the particular portion used likely to adversely affect the author's economic gain? If you use the "heart" or "essence" of a work, it is less likely your use will be considered fair.

The effect of use on the potential market for the copyrighted work:

- The more the new work differs from the original, the less likely it will be considered an infringement.
- Does the work appeal to the same audience as the original? If the answer is yes, it will likely be considered an infringement.
- Does the new work contain anything original? If it does, it is more likely the use of the copyrighted material will be seen as fair use.

Copyright and Electronic Publishing

- The same copyright protections exist for the author of a work regardless of whether the work is in a database, CD-ROM, bulletin board, or on the Internet.
- If you make a copy from an electronic source, such as the Internet or WWW, for your personal use, it is likely to be seen as fair use. However, if you make a copy and put it on your personal WWW site, it less likely to be considered fair use.
- The Internet IS NOT the public domain. There are both uncopyrighted and copyrighted materials available. Assume a work is copyrighted.

Tips for the Internet

- Always credit the source of your information
- Find out if the author of a work (e.g., video, audio, graphic, icon) provides information on how to use his or her work. If explicit guidelines exist, follow them.
- Whenever feasible, ask the owner of the copyright for permission. Keep a copy of your request for permission and the permission received.

Student Guidelines

- Students may incorporate portions of copyrighted materials when producing a project for a specific course.
- Students may perform and display their own projects and use them in their portfolio or use the project for job interviews or as supporting materials for application to graduate school.

Types of media and permissible amounts

- Motion media:
 - Up to 10 percent of the total or three minutes, whichever is less.
- Text material:
 - Up to 10 percent of the total or 1,000 words, whichever is less.
 - An entire poem of less than 250 words may be used, but no more than three poems by one poet or five poems by different authors in an anthology. For poems exceeding 250 words, 250 words should be used but no more than three excerpts from one poet or five excerpts from different poets in the same work
- Music, lyrics, and music video:
 - up to 10 percent of the work but no more than 30 seconds of the music or lyrics from an individual musical work.
- Illustrations or photographs:
 - no more than five images from one artist or photographer.
 - no more than 10% or 15 images, whichever is less, from a collection.
- Numerical data sets:
 - up to 10 percent or 2,500 fields or cell entries, whichever is less, from a copyrighted database or data table.
- Copying of a multimedia project:
 - no more than two copies may be made of a project.

When Should You Get Permission?

- When you intend to use the project for commercial or noneducational purposes.
- When you intend to duplicate the project beyond the two copies allowed by the guidelines.
- When you plan to distribute the project beyond the scope of the guidelines.

Summary of Multimedia Fair Use Guidelines

- Students may incorporate others' works into their multimedia creations and perform and display them for academic assignments
- Faculty may incorporate others' works into their multimedia creations
 - to create multimedia curriculum materials
 - to teach remote classes where access and total number of students is limited; technology makes copying impossible

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- if materials can be copied, they may only be made available remotely (by network) for 15 days and then must be placed on reserve for on-site (at the remote location) use only
- Faculty may demonstrate their multimedia creations at professional symposia and retain same in their own portfolios
- Time limit on fair use: 2 years from completion of the multimedia work
- Copies limit: generally, only 2, but joint work creators may each have a copy
- Portion limits:
 - motion media - up to 10% or 3 minutes, whichever is less
 - text - up to 10% or 1000 words, whichever is less
 - poem - up to 250 words, but further limited to:
 - three poems or portions of poems by one poet; or
 - five poems or portions of poems by different poets from an anthology
 - music - up to 10% or 30 seconds, whichever is less
 - photos and images - up to 5 works from one author; up to 10% or 15 works, whichever is less, from a collection
 - database information - up to 10% or 2500 fields or cell entries, whichever is less