

## A Word on Copyright: It's a Balancing Act!

Copyright owners have many rights, but what about you? What rights do you have with respect to accessing and using a copyright owner's work? Congress recognized that in order to improve our society through the advancement of knowledge, the public would need to access and use those works. To that end, Congress imposed specific limitations to the rights of copyright owners and included them in the Copyright Act of 1976. This mix of exclusive rights and limitations attempts to create balance in copyright. Regardless of what some people may think, copyright law is not solely focused on protecting the financial rights of the copyright holder.

### Copyright Exemptions

Copyright law includes exemptions that limit the rights of the copyright holder. Sections 107 through 122 of copyright law spell out limitations to the copyright holder's rights. Here are a few important copyright exemptions for educators:

Section	Stated Limitations
107	Permits the "fair use" of an owner's work without permission – for the purpose of "criticism, comment, news reporting, teaching, scholarship, or research." This exemption outlines four factors that must be met in order to argue a fair use.
108	Permits a library or archives to reproduce works for archiving purposes, to make copies for patrons and to participate in interlibrary loan – all without permission
109	Permits individuals to lend, give or sell copies of works they own without seeking permission of the copyright holder. This is also referred to as the First Sale Doctrine.
110	Permits displays of work and educational performances in face-to-face teaching and distance education. The TEACH Act expands upon the limitations in section 110.
121	Permits reproduction of works without permission of the copyright holder for the blind and other people with disabilities

### Section 107: The Fair-Use Statute

The fair use statute is, for many, the most important of all the limitations on the exclusive rights of the copyright holder. Fair use allows you to use copyrighted works for the purpose of teaching, learning and scholarship without obtaining permission, signing a license or paying a fee. Unfortunately, determining whether or not a use is "fair" is hardly a straightforward process.

To help people determine whether the use of a work in any particular case is "fair" the statute provides four factors that must be considered for each use of a copyrighted work. All four factors which affect fair use must be taken into account before reaching a conclusion. The following is a very brief outline of the four fair use factors:

#### 1. Purpose of the copyrighted work

This factor examines the "purpose and character" of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. In general, Congress favors nonprofit educational uses of copyrighted works over commercial uses of

copyrighted works. It is often noted that fair use is **not** a blanket exemption for educators. Just because you are using the material for educational purposes does not mean the use is fair. Each use must be analyzed and argued according to all four factors.

## **2. Nature of the copyrighted work**

In general, it is believed that fair use favors the use of published works over unpublished works. The scope of fair use is narrower for unpublished works because an author has the right to control the first public appearance of the work.

## **3. Amount of the copyrighted work**

This is often described as the “less is more” factor. This factor examines the “amount and substantiality” of the portion used in relation to the copyrighted work as a whole. No exact measures of allowable quantity exist in the law, however, fair use favors small quantities or amounts necessary to meet the educational objectives. The more you use of a given work, the more you should be prepared to argue that the amount used was critical to your educational objective.

## **4. Effect on the market of the copyrighted work**

The “effect on the market factor” is often viewed as the most complicated of the fair use factors. Exactly what is the market and potential market in each circumstance may be difficult to assess. Photocopying an article from a journal may not be viewed as having an adverse effect on the publisher’s market but copying the entire issue may (the publisher could argue that you should have purchased a reprint of the entire issue rather than copying one for free). Ask yourself, does your use deprive the copyright holder of income?

There are many excellent “fair use checklists” available on the Internet that can guide you in your determination of whether or not a use is fair. An excellent checklist is available from Indiana University at the following URL:  
<http://www.copyright.iupui.edu/checklist.htm>.

## **A Note about Fair Use “Guidelines”**

Do not confuse the Fair Use Statute (section 107) with the various “Guidelines” that followed the Copyright Act of 1976. Following the 1976 Act Congress asked that affected parties such as teachers, librarians, authors and publishers meet independently to design guidelines they felt would result in permissible educational uses of copyrighted materials. The publication, *Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals (1976)* was the result of those efforts. Other guidelines followed including those outlining the educational use of 1) music, 2) educational multimedia, 3) off-air recordings of broadcasts 4) digital images 5) software in libraries and 6) fair use in distance learning.

The guidelines appear authoritative because they were created at the request of Congress but none have the force of law. (Court decisions will always be based on the law not the guidelines). The guidelines are more specific than the law and propose amounts of works

that can be used in a given circumstance (which is why you will sometimes hear things like “you can use the work as long as it isn’t more than 10% of the whole” or “you can make multiple copies so long as the article is less than 2,500 words). The guidelines were actually designed with minimums in mind not maximums (as many view them). They are a good starting point in your analysis of fair use but if your case exceeds those “limits” *that does not mean your use is not fair!*

### **Further Learning**

#### **Cornell’s ”Copyright Term and the Public Domain in the United States” Chart**

[http://www.copyright.cornell.edu/training/Hirtle\\_Public\\_Domain.htm](http://www.copyright.cornell.edu/training/Hirtle_Public_Domain.htm)

Don’t forget – if the material is in the public domain you don’t need to argue fair use OR seek permission! This chart will help you determine whether or not the material is in the public domain.

#### **Fair Use of Copyrighted Materials**

<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

We never get tired of recommending Georgia Harper’s “Copyright Crash Course” from the UT Austin web site. This link will take you to specific information on fair use and Ms. Harper’s explanation of the four factor test.

#### **Ten Big Myths About Copyright Explained**

<http://www.templetons.com/brad/copymyths.html>

You hear people quote a lot of different “rules” regarding copyright. Test you current understanding of copyright and the use of copyrighted materials at this site by Brad Templeton.

#### **Stanford University’s Fair Use Site**

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

This is a excellent site for information on fair use specifically and copyright in general.