

Copyright Tip Sheet

What is Fair Use? It is one of several limitations to the rights of copyright holders provided within the law to make protected materials available for use by others, ensuring our ability and democratic right to freely exchange and transform ideas. *Title 17 USC §107: Limitations on exclusive rights* reads ...

Use ... for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include the —

- 1) Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- 2) Nature of the copyrighted work;
- 3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole;
- 4) Effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

How do you know if something is copyright protected? Copyright is secured automatically when the work is created. A work is created when it is fixed in a tangible form of expression that can be communicated by some means. In conformance with the Berne Convention (1989), works are no longer required to carry the © in order to be protected.

When can you apply fair use? Fair Use is analyzed on a case-by-case basis. To determine if your intended use of a work is fair, you must balance the use based on the (4) factors above. If your responses weigh in favor of fair use, then you may use the material without obtaining permission from the copyright holder. If your responses weigh against fair use, then you are best advised to obtain permission

for the use. Well-established guidelines indicate that *repeated use of the same materials may tip the balance against fair use. If this is the case, you should seek copyright clearance for each subsequent use of the materials.*

When do you follow copyright-related guidelines? Early on, Congress urged private parties to develop guidelines that could be applied to common fair use situations. The first set of guidelines were developed in 1976 on the issue of photocopying for classroom handouts (see next page). In 1998 the Conference on Fair Use (CONFU) proposed more guidelines to address technological issues. Keep in mind, however, that guidelines do not have the full force of law behind them. Court decisions have consistently been based on the (4) factor test provided in the law.

What copies can be made for teaching purposes? According to the *Agreement on Guidelines for Classroom Copying*, single print copies of the following may be made for scholarly research or used in teaching or preparing to teach a class:

- A chapter from a book
- An article from a periodical or newspaper
- A short story, short essay, or short poem
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

Multiple print copies (not to exceed in any event more than one copy per student in a course) may be made if:

- The copying meets the tests of brevity and spontaneity (addresses the amount and plan of use)
- The copying meets the cumulative effect test (addresses frequency of use)
- Each copy includes a notice of copyright

Provided that Overall:

- The copying does not replace or substitute anthologies, compilations, or collective works
- The works copied are not "consumables" such as workbooks, guides, or test booklets
- The copying does not substitute for the purchase of the original; is not directed by a higher authority; is not used repeatedly by the same instructor for the same course; and no charge beyond the actual cost of the copying is passed on to the student

How do you obtain permission to use copyright protected materials?

1st: **Select the work.** Select back-up materials if possible; Seek out materials in the public domain when possible

2nd: **Consider if permission is required.** Ask yourself if fair use applies; Are there any other exceptions that may apply (i.e. TEACH Act, First Sale Doctrine)?

3rd: **Obtain permission.** Identify the copyright owner (be aware that the person who created the work is not always the copyright owner!); Secure permission through the *Copyright Clearance Center* (www.copyright.com) or other collective rights agency; or contact the owner(s) directly by phone, e-mail, letter

4th: **If you can't obtain permission.** Return to fair use; Replace the item with a back-up; Change your plan of use; and/or Weigh the risks of use (don't think that you are "free and clear" because you didn't get a response from the copyright holder)

~Indiana University, c2002

How do you know if materials are within the public domain?

Materials in the public domain can be used freely without permission. These materials include, but are not limited to, "copyleft" and "creative commons" publications, many government documents, and materials for which the copyright has expired. The duration of copyright is based on many factors. To determine if a title or publication now falls within the public domain, please refer to the attached chart or go to: <http://www.copyright.gov/circs/circ15a.html>
<http://www.unc.edu/%7Euncclng/public-d.htm>

What alternatives do you have?

- Access Library-acquired materials that are already copyright-compliant
 - Online databases and e-journals
 - Print and media collections
- Take advantage of copyright-compliant Library services, such as Interlibrary Loan, Reserves, Seek assistance with creating persistent/durable links to electronic information
- Invoke TEACH Act for Distance Education courses

What are the penalties for infringement?

According to 17 USC §504, an infringer of copyright is liable for either 1) Actual damages and any lost profits; or 2) Statutory damages of not less than \$750 or more than \$30,000 per work, as determined by the court. *Willful infringement* can result in a liability of up to \$150,000 for each separate act of infringement. If a "good faith fair use defense" proves successful in court, statutory damages may be reduced to not less than \$200. And then there are "additional damages" that may come into play. *Although you can still be held liable for copyright infringement,*

whether or not you were aware that you were violating the law, there is no doubt that the penalties will be much more severe if you knew you were violating and chose to do it anyway!

How can you be sure you're in "safe harbor"?

- Familiarize yourself with the basics of copyright law and fair use doctrine
- Practice in good faith ... don't *willfully* infringe!
- Be consistent in your practices
- Keep detailed records of permissions sought/obtained independently
- Proactively seek legal and/or other expert advice if you have any questions or concerns

Recommended Websites

Agreement on Guidelines for Classroom Copying in Not-for-Profit Educational Institutions with Respect to Books and Periodicals

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

Association of Research Libraries

Applying Fair Use in the Development of Electronic Reserves Systems

<http://www.arl.org/access/eres/eresfinalstmt.shtml>

Consortium of College and University Media Centers, Fair Use Guidelines for Educational Multimedia

<http://www.ccumc.org/copyright/ccguides.html>

Creative Commons

<http://creativecommons.org/>

Guidelines for Educational Uses of Music

<http://www.musiclibraryassoc.org/copyright/Guidelines/Other%20Guidelines/Educational%20Use%20of%20Music.asp>

Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes

<http://library.pittstate.edu/OIM/Guidelines.pdf>

Guidelines for the Creation of Multimedia Projects, Distance Learning, and the use of Digital Images/CONFU Report

<http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>

Indiana University, Copyright Management Center, Checklist for Fair Use

<http://www.copyright.iupui.edu/quickguide.htm>

<http://www.copyright.iupui.edu/checklist.pdf>

Indiana University, Copyright Management Center, Copyright Quickguide

<http://www.copyright.iupui.edu/quickguide.htm>

Indiana University, Copyright Management Center, How to Secure Permission to Use Copyrighted Works

<http://www.copyright.iupui.edu/permsec.htm>

Library and Classroom Use of Copyright Videotapes and Computer Software
<http://www.ifla.org/documents/infopol/copyright/ala-1.txt>

Model Policy Concerning College and University Photocopying for Classroom, Research and Library Reserve Use
<http://fp.uni.edu/safford/copyright/modelpolicyconcerningcollege.html>

North Carolina State University, TEACH Act Toolkit
http://www.lib.ncsu.edu/scc/legislative/teachkit/act_text.html

Stanford University, Copyright & Fair Use
http://fairuse.stanford.edu/library_resources/

United States Copyright Office, Copyright Basics
<http://www.loc.gov/copyright/circs/circ1.html>

United States Copyright Office, Copyright Law of the United States
<http://www.copyright.gov/title17/index.html>

United States Copyright Office, Circular 15a: Duration of Copyright
<http://www.copyright.gov/circs/circ15a.html>

United States Copyright Office, § 107. Limitations on exclusive rights: Fair use
<http://www.copyright.gov/title17/92chap1.html#107>

United States Copyright Office, Digital Millennium Copyright Act Summary
<http://lcweb.loc.gov/copyright/legislation/dmca.pdf>

University of California
Guidelines for the Reproduction of Copyrighted Materials for Teaching and Research
<http://www.ucop.edu/ucophome/coordrev/policy/4-29-86.html#guide>

University of Georgia, Guide to Understanding Copyright & Educational Fair Use
<http://www.usg.edu/admin/legal/copyright/>

University of Maryland, University College. Office of Distance Education and Lifelong Learning
Copyright Primer
<http://www-apps.umuc.edu/primer/enter.php>

University of North Carolina, Timetable of When Works Pass into the Public Domain in the U.S.
<http://www.unc.edu/%7Eunclng/public-d.htm>

University of Texas at Austin Copyright Crashcourse
<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>

University of Texas at Austin, Fair Use
<http://www.utsystem.edu/ogc/intellectualproperty/copypol2.htm>

Tip Sheet created by Norice Lee, Head of Access Services at NMSU Library: nlee@lib.nmsu.edu The information provided is for educational purposes only. Please consult with the University's General Counsel for explicit legal advice and guidance.