



Copyright & Fair Use

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Copyright

The U.S. Copyright Act (title 17 of the U.S. Code) is the federal statute that describes copyright law in the United States.

Copyright protection applies to original works of authorship set in a tangible medium. Original works may include literary, dramatic, musical, architectural, cartographic, choreographic, pictorial, graphic, sculptural and audiovisual creations.

A tangible medium may include anything from paper to hard drives and other electronic memory devices, the web, film, software, architectural blueprints etc.

Why Copyright and Citation matter?

Properly citing sources protects against plagiarism.

- Plagiarism is using someone else's work without giving them credit. This is a form of academic dishonesty that is considered a serious offense and is handled by university processes.
- Properly citing a work is essential in an academic community but does not protect against **copyright** infringement.
- **Copyright** infringement can occur when using someone else's copyrighted work without permission or without a solid fair use case, and is a legal matter handled by the courts.

Why is Copyright important?

- You are creators and users of copyrighted works.
- Significant penalties can be imposed for copyright infringement.
- Copyright law may restrict how faculty can use copyrighted works in their teaching, research and writing.
- Copyright law offers a number of exceptions that can apply in an educational setting.

Copyright ~ What is protected?

- Copyright protection is designed to give creators of original creative works the right to be compensated when others use their works in particular ways.
- It grants copyright holders with exclusive rights to the reproduction, adaptation (preparation of derivative works such as translation of adaptation of a movie from a book), publication, performance and display of the work publicly.
- Today, copyright protection is automatic so no registration, use of the copyright symbol or notice is required.

Copyright ~ What is **not** protected?

- Works not fixed in a tangible form of expression (speeches or performances that have not been written or recorded).
- Titles, names, slogans or short phrases; common symbols or designs; mere listings or ingredients or contents.
- Works consisting entirely of “common property” and no original authorship such as standard calendars, height and weight charts, tape measures, rulers etc.
- Ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries.

What is Fair Use?

- Fair use provisions of U.S. copyright law allow use of copyrighted materials on a limited basis for specific purposes without the permission of the copyright holder.

Is my use fair?

The four factor test:

Factor	Weighing Towards Fair Use
Purpose	Nonprofit , educational, scholarly, or research use.
Nature	Published, fact-based content.
Amount	Using only the amount needed for a given purpose; Using small or less significant amounts.
Market	If there would be no effect, or it is not possible to obtain permission to be the work.

Fair Use

Question?

Is it necessary to weigh all four factors to decide whether a fair use exemption seems to apply to a proposed reuse?

To make a fair use assessment:

- Review the four factor test
- Consult the codes of best practice in Fair Use

Copyright and Fair Use Resources:

Check out the following resources related to the use of copyrighted materials in an academic setting.

[Know Your Copy Rights](#), an ARL brochure designed to help higher education faculty better understand the exercise fair use.

ARL's [Code of Best Practices in Fair Use for Academic and Research Libraries](#), which identifies eight scenarios and related fair use “principles” developed by the academic library community.

Fair Use Checklist:

Where the factors favoring fair use outnumber those against it, reliance on fair use is justified.

Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder.

Where the factors are evenly split, instructors should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified.

Not all of the facts will be present in any given situation. Check only those facts that apply to your use. No single item or factor is determinative of fair use. Instructors should consult the Legal Affairs office at their institution or at the Office of the Board of Regents if they have questions regarding analysis of the four factors.

For more information regarding the fair use factors, please see the fair use sections of the Policy on the Use of Copyrighted Works in Education and Research for the University System of Georgia, which can be found on the web at <http://www.usg.edu/copyright/>.

Complete and retain a copy of this checklist for each “fair use” of a copyrighted work in order to establish a “reasonable and good faith” attempt at applying fair use should any dispute regarding such use arise.

Factor 1: Purpose and Character of the Use

Weighs in Favor of Fair Use	Weighs Against Fair Use
Nonprofit Educational Institution	Commercial activity, profit from use
Used for Purpose of Teaching (including multiple copies for classroom use) and/or Scholarship or Criticism, Comment, News Reporting, or Parody	For public distribution
Used for noncommercial, nonprofit educational use	Used for entertainment
Transformative (use changes work for new utility or purpose)	Mirror image copying
Use is necessary to achieve your intended educational purpose	Use exceeds that which is necessary to achieve your intended educational purpose
Factor weighs in favor of Fair Use	Factor weighs against Fair Use

Factor 2: Nature of Copyrighted Work

Weights in Favor of Fair Use	Weights Against Fair Use
Published work	Unpublished work
Factual/information and educational in nature or nonfiction work	Fiction and highly creative work (art, music, novels, films, plays, poetry)
Non-consumable work	Consumable work (workbook, test)
Factor weights in Favor of Fair Use	Factor Weights Against Fair Use

Factor 3: Amount and Substantiality of Portion Used

Weights in Favor of Fair Use	Weights Against Fair Use
Decidedly small portion of work used (no more than 10% of work not divided into chapters of having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)	Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
Portion used is not central or significant to entire work as a whole	Portion used is central to work or “heart of the work”
Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose	Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
Access limited to students enrolled in course for only the term of the course	Access not limited
Factor weighs in Favor of Fair Use	Factor Weighs Against Fair Use

Factor 4: Effect on Market for Original

Weights in Favor of Fair Use	Weights Against Fair Use
Permission for digital excerpt is not readily available from publisher	Permission for digital excerpt is readily available from publisher
Decidedly small portion used	Large portion or entire work used
User owns lawfully acquired or purchased copy of original work	User does not own lawfully acquired or purchased copy of original work
Use stimulates market for original work	Use impairs the market or potential market for original work
Factor weighs in Favor of Fair Use	Factor Weighs Against Fair Use

Questions & Answers for Professors

Why do I need fair use for my teaching? Aren't there exceptions from copyright law specifically for teaching?

It's true that the law includes specific exceptions that benefit teachers and their students. In particular, 17 U.S.C. 110: US Code – Section 110 gives teachers special rights to use some works in the classroom and online without asking permission.

Fair use is a broad, general, flexible doctrine that can fill important gaps in these specific exceptions, enabling important activities that might fall just beyond the limits of other exceptions. Fair use also allows for important new technological uses that could not have been foreseen by the drafters of the Copyright Act, such as Internet search.

Questions & Answers for Professors

How do I know if the material I put on e-reserves fair use?

Principle One in the Code of Best Practices in Fair Use for Academic and Research Libraries states that “It is fair use to make appropriately tailored course-related content available to enrolled students via digital networks.” There are several enhancements and limitations that modify the principle, but the principle itself includes some key guidance.

The material should be “appropriately tailored” - meaning instructors should choose works or portions of works that serve your pedagogical purpose, and should not post material that is superfluous. This doesn’t mean you must use the least possible amount of material to minimally achieve your teaching goals, or that you can never post entire works when that is the amount that would best serve your teaching. It just means you should be thoughtful as you decide how much to use.

The material should be “course-related.” They are resources for teaching a course, an extension of the physical classroom and the physical reserves desk in the library; therefore, material posted to e-reserves should serve a legitimate pedagogical purpose related to the course.

The material posted to these sites should only be accessible to “enrolled students” in a relevant course or program of study.

Ways to help students decide when and where to apply Fair Use

- It is always okay for you to use discrete ideas and quotations from copyright-protected works in a classroom-related assignment or activity without prior permission from the author, as long as you attribute those ideas and quotations properly. For example, if you want to quote an excerpt from a Newsweek article in a research paper of yours, you may do so without asking permission from the author as long as you cite your source within the paper.
- Other uses of copyright-protected materials for classroom-related activities may be a bit more tricky. Follow these Fair Use Guidelines to determine whether or not it is okay for you to use larger pieces of in a work (i.e., a whole article) or certain types of works (e.g., images and audio files) in a classroom-related assignment or activity without obtaining prior permission.
- If you do obtain permission from an author to use a particular work, make sure you get it in writing (an email is fine), and keep a copy of it.
- Ultimately, it is your responsibility to abide by current copyright law and to refrain from using works and materials in ways that are not legally permissible. If you're unsure about whether or not something is legal, ask. A good person to approach about copyright issues is your university's reference librarian.