

Fair Use Guidelines for Multimedia in Education

The Fair Access Working Committee of the Consortium of College and University Media Centers (CCUMC) met for over two years to work out some agreements between representatives of education, government, and the private sector in areas that have not been addressed by current copyright legislation.

While the guidelines are not legally binding, they represent a negotiated agreement among the various interests about the appropriate use of copyrighted intellectual property for **noncommercial educational purposes**. They seek to clarify the application of fair use of copyrighted materials, as set forth in Section 107 of the U.S. Copyright Act, as teaching methods are adapted to new learning environments, and educators begin incorporating new multimedia materials into their instruction.

Copyright

Copyright is defined as the exclusive right of a creator to reproduce, prepare derivative works, distribute, perform, display, sell, lend or rent their creations.

It is a property right, and “intellectual” property right of the creator of the work.

Fair Use

The means by which educators of non-profit educational institutions may use copyrighted works without seeking permission or making payment to the author or publisher.

Multimedia

Involves the integration of text, graphics, audio and/or video into a computer-based environment.

Some of the highlights of the new guidelines are outlined below:

Portion Limitations of Copyrighted Material into "Fair Use" Educational Multimedia Projects

- Up to 10 percent or three minutes, whichever is less, of a **motion picture** may be used
- Up to 10 percent or 1,000 words, whichever is less, of **text** may be used
- An entire **poem** of 250 words or less may be used, but no more than three poems by one poet or five poems by different poets from any anthology may be used
- Up to 10 percent but no more than 30 seconds of a **musical work** may be used
- A **photograph or illustration** may be used in its entirety, but no more than five images by an artist or photographer may be used
- Up to 10 percent or 2,500 fields or cell entries, whichever is less, from a **copyrighted database** or data table may be used

Time Limitation for "Fair Use" Educational Multimedia Projects

- Educational multimedia projects created under these guidelines may be used for up to **two years** after the first instructional use with a class
- After two years, use of such materials, even for educational purposes, requires permission for each copyrighted portion incorporated in the production

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Electronic Network Limitations for "Fair Use" Educational Multimedia Projects

- Electronic networks may be used to share such materials with students in remote sites, provided there are technological limitations on access to the network and program (such as a password protection) and that the technology [prohibits users from making copies](#) of the material
- If the electronic network cannot prevent duplication of the material, educators may use the educational multimedia projects on the network for no more than [15 days](#) after its initial use via this technology

Copying and Distribution Limitation for "Fair Use" Educational Multimedia Projects

- Only [two copies](#) of the educational multimedia projects created under these guidelines may be used
- Of those copies available for use, only [one may be placed on reserve](#) in the college library or learning resources center for student self-study on site
- One additional copy may be kept for [preservation purposes](#), but it may only be used or copied to replace a lost, stolen, or damaged use copy
- Each [principal creator](#) of a joint project may keep one copy of the program for use in peer conferences or for inclusion in a student or professional portfolio

These guidelines were adopted on September 27, 1996, as a non-legislative report by the Subcommittee on Courts and Intellectual Property, Committee of the Judiciary, U.S. House of Representatives. The report issued the following advice in interpreting these guidelines:

While only the courts can decide whether a particular use of a copyrighted work fits within the fair use exemption, these guidelines represent the participant's consensus view of what constitutes the fair use of a portion of a work, which is included in a multimedia educational project. The specific portion and time limitations will help educators, scholars, and students more easily identify whether using a portion of a certain copyrighted work in their multimedia program constitutes a fair use of that work. They grant a relative degree of certainty that a use within the guidelines will not be perceived as an infringement of the Copyright Act by endorsing copyright owners, and that permission for such use will not be required. The more one exceeds these guidelines, the greater the risk that the use of a work is not a fair use, and that permission must be sought.

Excerpted from *Signals*, the Newsletter of the [Information Technology Initiative](#)

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The penalties for infringement are very harsh: the court can award up to \$100,000 for each separate act of willful infringement. Willful infringement means that you knew you were infringing and you did it anyway. Ignorance of the law, though, is no excuse. If you don't know that you are infringing, you still will be liable for damages - only the amount of the award will be affected.

There is one special provision of the law that allows a court to refuse to award any damages at all if it so chooses, even if the copying at issue was not a fair use. It is called ***the good faith fair use defense*** (<http://www.law.cornell.edu/uscode/17/504.html>) [17 USC 504(c)(2)]. It only applies if the person who copied material *reasonably* believed that what he or she did was a fair use - as would likely be the case if you followed this Policy! If you qualify for this defense, it makes you a very poor prospect for a lawsuit. On the other hand, if you disregard sound advice about fair use, a court would be free to award the highest level of damages available. This would make you a handsome target.

<http://www.loc.gov/copyright/>

Copyright Office – Washington D.C.

<http://www.libraries.psu.edu/avs/fairuse/>

The American Library Association

<http://www.law.cornell.edu/uscode/17/107.notes.htm>

Cornell University Law School's Discussion of Fair Use

<http://www.nmjc.cc.nm.us/copyrightbay>

New Mexico Junior College tutorial about copyright in the educational setting.

<http://www.benedict.com/>

The Copyright Website

<http://www.cetus.org/fair6.html>

Illustrative Scenarios and Analysis

<http://www.cetus.org/fair7.html>

Obtaining permission for use and Sample Letter

<http://www.lib.umich.edu/libhome/copyright/guidelines.html>

Copyright Information and Guidelines (Excellent Site)

<http://www.usg.edu/admin/legal/copyright/copy.html#part2b>

Scenarios and whether or not they are within Fair Use (Excellent Site)

<http://www.utsystem.edu/OGC/IntellectualProperty/cprtindx.htm#top>

One of the best web sites on Copyright and Fair Use (Five Stars *****)

<http://groton.k12.ct.us/mts/egtoc.htm>

Good web site built for schools and the implementation of copyright

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The four fair use factors:

1. What is the character of the use?
2. What is the nature of the work to be used?
3. How much of the work will you use?
4. What effect would this use have on the market for the original or for permissions if the use were widespread?

FACTOR 1: What is the character of the use?

- Nonprofit
- Educational
- Personal
- Criticism
- Commentary
- Newsreporting
- Parody
- Commercial

Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner - in favor of seeking permission. The uses in the middle, if they apply, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

FACTOR 2: What is the nature of the work to be used?

- Fact
- Published
- Imaginative
- Unpublished

Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance. Where is your balance tipping after you have assessed the first two factors?

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FACTOR 3: How much of the work will you use?

- Small amount
- More than a small amount

This factor has its own peculiarities. The general rule holds true (uses on the left tip the balance in favor of fair use; uses on the right tip the balance in favor of asking for permission), but if the first factor weighed in favor of fair use, you can use more of a work than if it weighed in favor of seeking permission. A nonprofit use of a whole work will weigh somewhat against fair use. A commercial use of a whole work would weigh significantly against fair use.

For example, a nonprofit educational institution may copy an entire article from a journal for students in a class as a fair use; but a commercial copyshop would need permission for the same copying. Similarly, commercial publishers have stringent limitations on the length of quotations, while a student writing a paper for a class assignment could reasonably expect to include lengthier portions.

Where is your balance tipping after you have assessed the first three factors? The answer to this question will be important in the analysis of the fourth factor!

FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market

This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing! It depends on what happened with the first three factors.

Here's why:

This fourth factor asks, "Is the owner losing money because of this use?"

In practical terms, if a use would be a fair use except for the fact that it deprives the copyright owner of some royalties, that deprivation alone is not sufficient to convert the otherwise fair use to an infringing one. On the other hand, if one could conclude that a use was unfair after reviewing the first 3 factors, then, it does not break the logic rules to take lost royalties into account. This means that if a use is tipping the balance in favor of fair use after the first three factors, the fourth factor should not affect the results, even if there is a market for permissions, even if the owner would lose money because of the use. On the other hand, if a use is tipping the balance in favor of asking for permission one need not "assume" it's not fair, the first 3 factors show that it's not. Add to that an active permissions market and the fourth factor will decisively tip the balance. Forget fair use. Get permission.

The facts in the middle illustrate circumstances that probably cause the fourth factor to have little or no effect.