

An Educator's Guide to Copyright and Fair Use

What exactly is copyright and fair use?

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available for both published and unpublished works.

For educators, the "fair use" doctrine of copyright law, grants us exceptions for use of copyrighted materials without paying royalties. Fair use allows someone other than the copyright owner to make limited use of a copyrighted work without permission for purposes such as teaching, criticism, research and parody.

How do I know if copyright law applies?

- An original work created on or after January 1, 1978 is automatically protected for the length of the author's life plus 70 years.
- An original work created before January 1, 1978 but not published or registered by that date is given the same right as if it were created on or after January 1, 1978.
- An original work created and published before January 1, 1978 is protected for the first 28 years. If the copyright is renewed during the 28th year, the work is protected for another 75 years.

If something is in the public domain, does that mean I can freely use it?

Not necessarily, as public does not mean free in this sense. The following would be in the public domain:

- Many, but not all, United States government publications;
- Works copyrighted before January 1, 1978 and published in the United States more than 75 years ago, unless the copyright was extended;
- All works copyrighted in the United States before September 19, 1906.

As educators, we have a variety of wonderful resources to use in our classrooms. To avoid misuse of this privilege and to make sure we are using materials fairly, it is important to understand how copyright law applies when utilizing various resources. Resources include, but are not limited to: literary works, pictures, graphics, movies and other audiovisual works, sound recordings like CDs, videos or cassettes, and musical works with or without words.

In this document, you will find some typical situations with real solutions to help guide you in complying with copyright law and fair use.

Copyright protects the particular way an author has expressed himself. According to Section 107 of the Copyright Act, the Doctrine of Fair Use means that individuals have limited rights to use copyrighted material. Four questions you must remember to ask yourself when using copyrighted material:

- For what **Purpose** am I using this? Personal or school use?
- What is the **Amount** of work to be used? A little bit (less than 10%) or more?
- What is the **Nature** of the work to be used? Is it factual or creative?
- What **Effect** would this have on the market if everyone were doing this? Does the copying take away from sales or royalties paid for permissible use?

Fair use may be confusing. Acknowledging the source of the copyrighted material does not substitute for having the permission to use the material. While there are not always hard and fast rules, there are guidelines for educators.

Guidelines for Public Viewing

If you plan to show a movie you must be able to answer **YES to each** of the following questions:

- Is it non-profit? (Cannot charge a fee; cannot be used for school clubs)
- Is it for a classroom or similar setting? (Cannot be shown in auditorium, cafeteria, bus, etc.)
- Is it for members of a school class only? (Not open to the public)
- Is it a legal copy?
- Will there be face to face instruction? Does it relate to the lesson? Is it integral to what is being taught right now? (Using a movie to review a lesson or prepare for future lessons is not allowed.)

Books

For my literature class, I wish to compare the writing styles of several authors. May I copy portions from various texts to give to my class for comparison?

Yes. Fair use will allow you to copy 1000 words or up to 10% of the text.

As a first grade teacher, I would like to copy the jacket or a picture in a book to display in my classroom to encourage reading. Is this okay?

Yes. The copy is being used for an educational purpose and within the classroom. This would fall under the fair use doctrine.

You may make a single copy of a chapter book, an article from a journal, periodical, newspaper, a short story, essay, poem, or a diagram or picture in any of those works. A current periodical article may be copied if there is not sufficient time to obtain permission from the copyright holder.

The law does not allow one to make copies of the same article for other classes when there would have been ample time to request permission (and perhaps pay a fee). The library may be provided with print material, which can then be copied and placed in a location or on a server where students may retrieve it. If copies of multiple works are needed for each student, you may do this for one-time distribution. A notice of copyright should be on the first page of each copy.

In the past, I have photocopied material at the last minute to incorporate into my lesson plan for the next day. How do I know if this is okay?

Review the Purpose, Amount, Nature, and Effect questions. If you are still in doubt, do not copy it. Ask the library media specialist for guidance.

Software

I would like to teach my students how to set up a monthly budget. I have Quicken software at home. Am I able to bring that to school for use in my classroom?

Depending on the licensing agreement, one may be permitted to install a personal commercial software program on a single classroom computer for limited use with students. **HOWEVER, Genesee Valley Central School's Acceptable Use Policy does not allow this.**

If the school purchases software, am I permitted to install it on my home computer?

Copyright law does allow software licensed to the school or district for limited job-related use at home. **HOWEVER, Genesee Valley Central School's Acceptable Use Policy allows for Microsoft Office only. No other software may be used.**

Copies of computer software may not be made for your own use or to distribute to students.

What about Numerical Data Sets, Computer Databases, and Spreadsheets?

Up to 10% or 2500 field or cells, whichever is less, may be used from a copyrighted database.

PERFORMING ARTS WORKS

- **Television, Video & Film**

As a business teacher, interviewing skills is part of the curriculum. I have taped an episode from the television show 20/20 that relates to this topic. Does fair use allow me to use this in the classroom?

You may lawfully tape a program which airs on television, but you must use and destroy the copy within 7-10 days. If you want to show the program in future classes, you will need to purchase a copy of the tape, request permission to keep using your tape copy, or re-tape the program when it airs again.

As a drama teacher, I frequently bring in copies of shows or films for the students to critique. Is this wrong?

Under the fair use doctrine, this is acceptable since the students are critiquing the work. Otherwise, you are permitted to show only 10% of the entire work or three minutes, whichever is less.

With computers becoming a fixture in classrooms, it is much easier to show DVDs instead of rolling in the large cart that has the TV and VCR. Since the school already purchased the videotape I need, can it be copied onto a DVD?

The Digital Millennium Copyright Act (1998) makes it illegal to bypass copy protection mechanisms even to make copies of lawfully acquired material. Consider the effect this would have on the market if every school did this. For that very reason, if a movie is available on DVD, the library should purchase it. If not, permission would need to be obtained from the copyright holder.

- **Music, Lyrics and Music Videos**

Are students allowed to download music?

If a student is downloading music for a project, he should be on a website approved by the artist or producer. The student may use 30 seconds of music or up to 10%. It is illegal for anyone to download music from shared files via the Internet since this would affect the sales and revenue of the artist. **HOWEVER, Genesee Valley Central School's Acceptable Use Policy does not allow this.**

For faculty, staff and students who wish to use music for presentations, MediaNet offers Soundzabound. If you are not sure how to access this, please ask your library media specialist.

Due to budget cuts, I do not have enough sheet music to meet the needs of my class. Can I copy the number I need since I consider this an emergency?

Sheet music or entire works may be copied for performances and only in emergencies. A budget cut would not be considered an emergency. If the sheet music is out of print, then it may be copied. Students may need to be asked to contribute to the cost of the material. In a true emergency, copies may be made but would need to be replaced with purchased originals.

Sound recordings may be copied once for classroom or Reserve Room use.

The cheerleaders did a dance routine to a popular song. Is this copyright infringement?

If permission was not requested from the copyright holder, yes. There are dance routines and music CDs specifically made for performances such as these. If the cheerleaders ‘mix’ their own music, that is acceptable. (A mix uses parts of many songs and is presented as one.)

- **Pantomimes and Choreography**

Permission is required from the copyright holder since performing arts works are intended to be “performed” directly before an audience.

- **Sculptures, Figurines, Carvings, Molds**

No more than 10% or 16 images from one work may be used without permission.

- **Photographs**

Five photographs or images from a single author, or 15 works or up to 10% from a collection, may be made.

Fair Use also applies to students. They have the same right to make a copy of materials for educational use.

The Fair Use Guidelines for Educational Multimedia and the TEACH Act permit you and your students to make limited use of copyrighted works in multimedia presentations, as long as you limit the amount used and destroy the work after two years. Most material used includes print documents, cartoon clippings from newspapers or magazines, photographic images from books, and embedded audio and video clips. The law limits use of multimedia materials for two years, after which time permission must be sought from the copyright holder.

STUDENTS' WORKS

Copyright applies to both published and unpublished works. Did you know a student's work is protected by copyright law? Be sure to notify students when work will be displayed, inside and outside the classroom. Allow students the right not to have work displayed. If you wish to keep a student's work for future use, obtain the permission of the student.

To do this, place “Unpublished work © 2008 student's name” on the work.

As soon as an idea becomes tangible, it becomes the property of the author who created the work and may be copyrighted. If a student has created a work of exceptional value, you may encourage him or her to file an application for copyright. Applications and more information may be downloaded from <http://www.copyright.gov>. Registration establishes a public record of the copyright claim. If a student's work is infringed upon, suit may be filed in court. A student preparing a portfolio for college, for example, may protect her work by applying for copyright protection.

Understanding copyright law can be a valuable tool to use for the benefit of your students. Artwork, video production, personal web pages, and articles are examples of works created by students that can be copyrighted to showcase their work. Guiding a student to copyright his material is an added bonus to his education.

What if I need permission?

If the work you wish to use exceeds fair use, contact the library media specialist. Permission must be granted by the copyright holder.

Is there anything I can use without copyright concern?

As an educator, you may use the following freely:

- Any work that is not fixed in a tangible form of expression;
- Titles, names, short phrases, slogans, familiar symbols and designs, recipes; and
- Ideas, procedures, methods, systems, processes, concepts and principles.

AVOIDING COPYRIGHT INFRINGEMENT

Willful infringement means that you knew you were infringing but did it anyway. Although there is flexibility in the way we use resources for education, we must be responsible for knowing where the limits are and what to do when we need to exceed these limits. Copyright infringement carries a stiff penalty. The court can award up to \$100,000 for each separate act of willful infringement. Imagine the impact this would have on the school district and taxpayers, not to mention the poor example set for students. Moreover, you may be placing your own job in jeopardy.

It may be safe to assume that many educators have broken copyright laws at one time or another. And more often than not, we were not aware of it. Educators have an ethical responsibility to set an example by obeying the law.

- Work with your school library media specialist to have items placed on reserve for students.
- If you are aware of a particular program being aired on television, request your students view it.
- If in doubt, please ask your library media specialist.

The Business Software Alliance recently introduced a free educational program designed to raise student awareness of copyright and encourage responsible behavior online. “B4UCopy” was designed by curriculum specialists and offers a comprehensive program with lessonplans and teacher guides for grades 3-12. The curricula are available for free download at:

Grades 3-8: www.b4ucopy.com/kids

Grades 9-12: www.b4ucopy.com/teens