

Copyright

Fair-Use

INSTRUCTIONAL TECHNOLOGY DEPARTMENT

PENSACOLA JUNIOR COLLEGE

Copyright Issues for the Academic Professional

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Scope

The purpose of this training is to provide the participant an overview of copyright and fair use responsibilities for the academic professional.

What is Copyright?

- Text Copyright is a federal law. It is Title 17 of the United States Code.
- Copyright is the right of authors to control the use of their work for a limited period of time.
- A copyrighted work must be an original work of authorship which is fixed in a tangible medium of expression.

Where did the copyright law come from?

- Copyright law originated with the United States Constitution. In Article I, Section 8, the Constitution states that "Congress shall have the power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries".
- The Copyright Office of the Library of Congress is responsible for overseeing the administrative functions of the copyright law.
- Congress enacts copyright laws.
- The Federal courts interpret and enforce the copyright law.

Why is copyright important?

Copyright law has a dual role. It provides exclusive rights to authors in order to protect their work for a limited period of time but it was also established to promote creativity and learning.

When does a work become copyrighted?

A work becomes copyrighted when it is fixed in a tangible medium of expression. After March 1, 1989 works no longer require a copyright notice (© or the word copyright, the author's name and the year of publication). Copyright registration is also no longer required.

How long does a copyright last?

Works created on or after January 1, 1978 are protected for a term of the life of the author plus 70 years. If it is a corporate author then the protection is for the shorter of 95 years from publication or 120 years from creation.

What are the copyright holder's exclusive rights?

- To reproduce the work.
- To distribute the work.
- To create derivative works.

- To publicly perform the work.
- To publicly display the work.
- To publicly perform sound recordings by means of a digital audio transmission.

Should You Copyright

What can be copyrighted?

Eight categories are copyrightable:

- Literary, musical and dramatic works.
- Pantomimes and choreographic works.
- Pictorial, graphic and sculptural works.
- Sound recordings.
- Motion pictures and other AV works.
- Computer programs.
- Compilations of works and derivative works.
- Architectural works.

What cannot be copyrighted

- Ideas, procedures, methods, systems, processes are not copyrightable. Example: Recipes are not copyrightable. However, the specific arrangement of recipes could be copyrightable.
- Titles, names, short phrases, slogans are not copyrightable. Example: Nike's slogan "Just do it" is not copyrightable. However, a slogan can receive trademark protection as is the case in the example.
- Facts, news, and research are not copyrightable. Example: A standard calendar.
- Works in the public domain are not copyrightable. Example: Works created by United States government employees.
- Works that are not fixed in a tangible medium of expression. Example: Extemporaneous speeches that are not written or recorded.
- For further information, visit <http://www.lib.purdue.edu/uco>

What is Public Domain?

The public domain consists of all works that never had copyright protection and works that no longer have copyright protection. The public domain also includes works created by the United States government. All works in the public domain are free for the public to use.

What is Fair Use?

Fair use is one of the exemptions in copyright which allows use of copyrighted materials without obtaining permission as long as the use can be considered fair. There is a four-factor analysis which must be applied to each use to determine whether the use is fair. Each factor is given equal weight. The goal is to achieve a balance between the rights of the copyright holder with the rights of the public. Fair use is also technologically neutral so the same analysis must be applied to use in any medium.

How to Determine Fair Use?

First Factor = Purpose and Character

The first factor addresses the character and purpose of the use of the work. The use under Tipping Factor when combined with any of the uses in the Favors Fair Use column strengthens the balance in favor of fair use. When the uses under Tipping Factor are combined with the uses in the Favors Permission column, the use then weighs more in favor of fair use.

Favors Fair Use	Tipping Factor	Favors Permission
Nonprofit	Teaching	Commercial
Educational	Research	Entertainment
Personal	Scholarship	For Profit
-	Criticism	-
-	Commentary	-
-	News Reporting	-

Second Factor = Nature of Work

The second factor looks at the creativity of the work. Fair use generally weighs more in favor of factual works than fictional ones.

Fair use tends to favor published works more so than unpublished works. The rationale for this is embodied in the exclusive rights granted to the copyright holders. The copyright holder has the exclusive right to determine when their work is first published.

Favors Fair Use	Favors Permission
Fact	Fiction
Published	Unpublished

Third Factor = Amount

The third factor looks at the amount of the work that is being used. A small amount generally weighs in favor of fair use where a large amount would weigh more in favor of requesting permission. However, there are times when the use of even a small amount of work if it can be considered the heart of the work would be an infringement. There is no magic number or formula which determines an acceptable amount.

Favors Fair Use	Favors Permission
Small Amount	Large Amount
Amount used is not significant to work	Amount used is heart of work

Fourth Factor = Market Effect

The fourth factor takes into account how the intended use would impact the market for the work. Generally, the more restricted the use, the less impact on the market. The use of some works such as standardized tests, workbooks or educational videos is very rarely found to be fair use because the works are produced specifically for the educational market.

Favors Fair Use	Favors Permission
No major impact	Major impact
Licensing/Permissions unavailable	Licenses/Permissions available
Limited/Restricted access to work	Work is made available to the world
User/Institution owns legal copy	Use is repeated or long term

Evaluate the use for each factor and make a good faith determination as to whether the use in light of all four factors can be considered fair use. If it is not fair use and none of the other exemptions apply, then permission must be obtained to use the material.

Other Exemptions

Face-to-Face teaching

The copyright law allows nonprofit educational institutions to display and perform copyrighted works in face-to-face teaching activities in the classroom or in a similar place devoted to instruction. Any performance of an audiovisual work or display of individual images must be from a legally acquired copy of the work.

Distance Education

There are limitations as to what copyrighted works can be transmitted to distance learners as well as to where those transmissions can be received and who can receive the transmissions.

The following copyrighted works are allowed to be transmitted:

1. All displays
2. Performance of a non-dramatic literary work
3. Performance of a non-dramatic musical work

The displays and performances must be:

1. A regular part of the systematic instructional activities; and
2. Directly related and of material assistance to the teaching content

The transmission must be received primarily in:

1. Classrooms; or
2. Places normally devoted to instruction

The transmission must be sent to students who cannot attend classrooms or places devoted to instruction due to:

1. Disabilities; or
2. Special circumstances

Getting Permission

Permission to use copyrighted material must be obtained when the use is not covered by the copyright law and its exemptions. Permissions should be in writing and from the copyright holder. Word to the wise - **Document, Document, Document**. Every time you request permission to use material, keep a file folder of all correspondence. Maintain a paper trail.

All requests for permissions must be sent to the copyright holder of record or their agent. Requests should include the following information:

1. Your name, address, telephone number, and fax number.
2. Your title/position and name of university.

3. The date of your request.
4. A complete and accurate citation.
5. A precise description of the proposed use of the copyrighted material as well as when and for how long the material will be used.
6. A signature line for the copyright holder including their title if they are representing a company and the date.

Online References

University Copyright Office, Purdue University

<http://www.lib.purdue.edu/uco/>

United States Copyright Office

<http://www.loc.gov/copyright/circs/circ21.pdf>

The Consortium of College and University Media Centers

<http://www.indiana.edu/~ccumc/copyright.html>

<http://www.indiana.edu/~ccumc/mmfairuse.html>

