

# Copyright and Fair Use Facts

## FACT #1

Copyright laws apply to:

- literature (including computer programs)
- music (and accompanying lyrics)
- drama (and accompanying music)
- pantomime and choreography
- pictures, graphics (including maps) and sculpture
- motion picture and audiovisual productions
- sound recordings
- architecture

## FACT #2

Copyright law gives copyright owners the exclusive right to:

- Reproduce a work
- Prepare derivative works based on the original
- Distribute copies
- Perform the work
- Display the work
- Transmit digital audio in the case of sound recordings

## FACT #3

Just because there's no © symbol does not mean you can use the work freely. Copyright applies to a work as soon as it is fixed in a tangible form. A person does not have to be registered with the US Copyright Office for infringement action to be taken.

## FACT #4

Acknowledging the source of a copyrighted material is not a substitute for obtaining permission.

## FACT #5

Only the copyright owner has the exclusive rights to reproduce or display publicly their work. Only they can give permission for others to do the same.

## FACT #6

Exclusive rights to works on the web still apply even though there may be no copyright notice.

## FACT #7

There are cases where it is permitted to "borrow" materials without obtaining the copyright holder's permission. This is called fair use.

## What is Fair Use?

"Fair Use" provides for exceptions to the exclusive rights of copyright owners, making it possible for teachers and librarians to use portions of copyrighted works for specific purposes. Below, is the part of the 1976 US Copyright Law governing this area:

### **§ 107. Limitations on exclusive rights:**

#### **Fair use**

*The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, 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 purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- ◆ *the nature of the copyrighted work;*
- ◆ *the amount and substantiality of the portion used in relation to the copyrighted work as a whole;*
- ◆ *and the effect of the use upon the potential market for or value of the copyrighted work.*

Since UW-La Crosse is a nonprofit, educational institution, many people think that they can post whatever they want to their web site, D2L or library electronic reserve course pages. This is not true!

Claiming "educational purposes" alone is not good enough to claim fair use. All four factors must be considered. Each is subject to interpretation, and therefore, requests need to be examined case by case.

## DO IT YOURSELF FAIR USE ANALYSIS:

PURPOSE	
<i>Favoring Fair Use</i>	<i>Opposing Fair Use</i>
<input type="checkbox"/> Teaching (including multiple copies for classroom use)	<input type="checkbox"/> Commercial activity
<input type="checkbox"/> Research	<input type="checkbox"/> Profiting from the use
<input type="checkbox"/> Scholarship	<input type="checkbox"/> Entertainment
<input type="checkbox"/> Nonprofit Educational Institution	<input type="checkbox"/> Bad-faith behavior
<input type="checkbox"/> Criticism	<input type="checkbox"/> Denying credit to original author
<input type="checkbox"/> Comment	
<input type="checkbox"/> News reporting	
<input type="checkbox"/> Transformative or Productive use (changes the work for new utility)	
<input type="checkbox"/> Restricted access (to students or other appropriate group)	
<input type="checkbox"/> Parody	

## NATURE

### *Favoring Fair Use*

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

### *Opposing Fair Use*

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

## AMOUNT

### *Favoring Fair Use*

- Small quantity
- Portion used is not central or significant to entire work
- Amount is appropriate for favored educational purpose

### *Opposing Fair Use*

- Large portion or whole work used
- Portion used is central to work or "heart of the work"

## EFFECT

### *Favoring Fair Use*

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

### *Opposing Fair Use*

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available licensing mechanism for use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long term use

**Source:** Buttler & Crews, Indiana University, 1999  
<http://www.copyright.iupui.edu/checklist.htm>

## **FAIR USE – Use it or lose it!**

Fair use has been attacked from all sides recently. It's everyone's responsibility to put it into practice. This will assure that it is available for use in the future.

## Options to Fair Use

- Seek permission
- Use public domain materials
- Adjust use and re-analyze fair use

## Online Resources

- Murphy Library web page  
<http://www.uwlax.edu/murphylibrary/faculty/copyrgt.html>
- Plagiarism links  
<http://www.uwlax.edu/murphylibrary/plagiarism.html>

Only one thing is impossible for God: to find any sense in any copyright law on the planet.

- *Mark Twain's Notebook*, 1902-1903

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