

## **Copyright ... It's the Law!**

This publication is a review of the literature on the Copyright Act of 1976 (P.L. 94-553) the Computer Software Act of 1980 and accompanying legislative reports and guidelines. It is meant to be a quick reference to copyright and not a definitive source. It was compiled to help educators become informed about their rights and responsibilities as users of copyrighted materials.

Legal cites, rationale, and discussions are not included in order to make this publication as brief and easy to use as possible.

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### **CAVEAT**

This publication is intended to be a general discussion and not a definitive analysis of copyright.

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# **COPYRIGHT ... IT'S THE LAW!**

## **INTRODUCTION**

Copyright protection is for the lifetime of the author plus 50 years. Copyright protection exists from the time "pen hits paper"; from the time the work is created in fixed form. The copyright of the work immediately becomes the property of the author who created it.

Protection is provided for "original works of authorship fixed in any tangible medium of expression." Copyright protection for an original work of authorship does not extend to any idea, procedure, process, system, or discovery.

It is not necessary to register the work in the Copyright Office in order to secure copyright. An author has copyright as soon as the work is in fixed form. Under the law, persons must assume that any work created after 1978 is copyrighted and, therefore, permission to copy should be requested. There are definite advantages to registering a work at the Copyright Office.

## **WHAT IS COPYRIGHTABLE**

Copyrightable works include the following categories:

1. literary works
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings

To be copyrightable, a work must be original in the sense that the author has created it by his or her own skill, labor, and judgment; but no large measure of novelty is necessary.

## **WHAT IS NOT COPYRIGHTABLE**

These items or works are not copyrightable:

1. words and short phrases such as names, titles, and slogans
2. familiar symbols or designs
3. mere variations of typographic ornamentation, lettering, coloring
4. mere listing of ingredients or contents
5. ideas, plans, methods, systems or devices
6. blank forms, account books, bank checks, diaries, graph paper, order forms, report forms, scorecards, timecards
7. works consisting of common property-type information.

## **ARE FACTS, RESEARCH COPYRIGHTABLE?**

Facts cannot be copyrighted. Factual information is in the public domain so an author can use facts, whether correct or incorrect, that are published in a copyrighted article without asking permission. Copyright permission extends only to an author's expression of facts and not the facts themselves.

## **EXCLUSIVE RIGHTS OF THE COPYRIGHT OWNER**

The copyright owner has five basic rights. Violation of any of these rights is an infringement of the copyright law.

The copyright owner has the right to...

- ...reproduce the work
- ...prepare derivative works
- ...perform the work
- ...display the work
- ...distribute the work

## BUT WHAT ABOUT FAIR USE?

Congress has given the five exclusive rights to the copyright holder, but Congress also added some limitations. If there were not limits on the owner's rights, it would not be possible to copy anything for any reason without the owner's permission. Some of these limits are outlined specifically in various Sections of the law. Other limits are relegated to the broad interpretations under Fair Use.

"Fair Use" has been the cry educators have used when copying for instructional purposes. Educators have a tendency to lump all copying done in the school setting under the banner "fair use" because schools are nonprofit, and the copying is done to teach students. "Fair use" is often used as an excuse for copying rather than a well thought out reason for copying. Fair Use is a part of the copyright law.

Section 107 of the 1976 Copyright Act discusses four factors that determine whether copying can be done legally. All four of the factors must be considered in determining fair use. All four criteria must be met before copying of any material is allowed. The law does not give one factor more weight over another. However, the courts have generally placed the most emphasis on the last factor while the second factor is generally accorded the least importance and is also the most unclear of the four.

1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
4. The effect of the use upon the potential market for or value of the copyrighted work.

The four factors are explained below.

### **PURPOSE AND CHARACTER OF THE WORK**

If the purpose for copying does not fall into the categories of criticism, comment, news reporting, teaching, scholarship or research, it is not a fair use. The fair use guidelines are not to be interpreted as any sort of not-for-profit or educational "carte blanche" for copying.

### **NATURE OF THE COPYRIGHTED WORK**

"Where the nature of the copyright work is more in the nature of a collection of facts than in the nature of a creative or imaginative work, alleged infringers have greater license to use portions of such work under the fair use doctrine than they would have if creative work were involved." (New York Times Co. v Roxbury Data Interface, Inc.) In other words, copying a news magazine article (factual) is more likely to be allowed under the Fair Use than copying a short story (creative).

## **AMOUNT OF THE WORK USED**

The use of an entire work, in other words, wholesale copying, can never be a fair use, even in cases where the infringer had no intent to infringe. Copying a large portion of a work or the "essence" of a work is an infringement.

## **FAIR USE SUMMARY**

Copying parts of or entire works for use in a classroom cannot be done simply because the purpose is educational. The Fair Use statute is used to determine the legality of copying when the instance of copying is not addressed in the other sections of the Copyright Act. In other words, first look to the Copyright Act and the accompanying guidelines for the permission to copy. If the copying is not specifically prohibited, it may be allowed under Fair Use.

# GUIDELINES FOR EDUCATION OR CLASSROOM COPYING OF BOOKS OR PERIODICALS

(Not Musical or Audiovisual Works)

There are guidelines established to help educators decide when copying print materials is allowed. GUIDELINES FOR CLASSROOM COPYING IN NONPROFIT EDUCATIONAL INSTITUTIONS was written by educators, authors, and publishers and is a part of the legislative history of the Copyright Act. The GUIDELINES are not a part of the law.

The GUIDELINES are prefaced by the statement: "There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use."

## **SINGLE COPYING**

Teachers may make single copies of a chapter of a book; an article from a periodical or newspaper; a short story, essay, or poem; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper to teach a class.

## **MULTIPLE COPYING**

Multiple copies (one copy per pupil of course) can be made if it meets the criteria of brevity, spontaneity, and cumulative effect and if each copy contains a notice of copyright.

1. Brevity. A complete poem printed on no more than two pages or an excerpt from a longer poem not to exceed 250 words copied in either case.

A complete article, story, or essay of less than 2,500 words or an excerpt from prose less than 1,000 words or 10% of the work, whichever is less, but in either event a minimum of 500 words to be copied. One chart, graph, diagram, drawing, cartoon, or picture per book or periodical issue.

2. Spontaneity. Copying is done by the teacher when there is not a reasonable length of time to request and receive permission to copy.
3. Cumulative Effect. The copying is only for one course and only nine instances of multiple copying per course during one class term is allowed. Not more than one short poem, article, story, essay, or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

## **SPECIAL WORKS**

Short works such as children's books are often less than 2,500 words. These works cannot be copied as a whole; but an excerpt of not more than two published pages containing not more than 10% of the words found in the text may be reproduced.

## **PROHIBITIONS TO SINGLE OR MULTIPLE COPYING**

You can't copy:

- to substitute for purchase or replacement
- workbooks, exercises, standardized tests, or answer sheets
- the same item by the same teacher term after term
- if it is directed by a higher authority
- if there is a charge to students beyond the photocopy cost
- to create, replace, or substitute for anthologies, compilations, or collective works.

## GUIDELINES FOR VIDEOTAPING

### OFF-THE-AIR RECORDING

GUIDELINES FOR OFF-THE-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES is a product of Congressman Robert Kastenmeier's committee and is not a part of the law. It does serve as the authority for taping off-air for educational purposes.

1. The guidelines apply only to off-air recording by nonprofit educational institutions.
2. Videotapes may be kept for only 45 calendar days after the recording date. The tapes must be erased after this time.
3. The videotape may be shown to students only during the first ten school days after the recording date. It may be repeated once for reinforcement (Points 2 and 3 are the 45-10 rule).
4. Off-air recordings may be made only at the request of an individual teacher and not in anticipation of a teacher request. The same teacher can request the program to be recorded only once.
5. If several teachers request the same program be recorded, duplicate copies may be made.
6. After the first ten school days allowed for showing, the recording may only be used for evaluation purposes.
7. Off-air recordings may not be edited or combined with other recordings to create an anthology or a new work.
8. All copies of the recording must contain a notice of copyright as broadcast.
9. Schools are expected to establish the appropriate controls to ensure compliance with these guidelines.

The above guidelines and the law do not address the situation of a teacher who videotapes a program off-air at home, and then uses the videotape in the classroom. A review of the literature indicates that the teacher should follow the above guidelines to comply with the spirit of the law.

### PUBLIC BROADCAST PROGRAMS

Public Broadcasting Service, Public Television, Great Plains National Instructional Television Library, and Agency for Instructional Television allow educators to videotape their programs off-air under these conditions:

1. Recordings may be made by students or teachers in accredited, nonprofit educational institutes.

2. Recordings may be used only for instruction in a classroom, lab, or auditorium. (Not restricted to one classroom or one teacher).
3. Recordings may not be shared outside of that school.
4. Recordings may be used as often as needed for seven days, and then must be erased.

### **"FOR HOME USE ONLY" VIDEOTAPES**

Rented videotapes often carry the warning "FOR HOME USE ONLY" which raises the question of whether the rented videotapes may be used in the classroom. If the videotape has been cleared for public performance, there is no problem using it in the classroom.

The gray area revolves around whether a classroom is a public place. The debate over this question will continue until a court case resolves it. In the meantime, a review of literature indicates that a teacher could show a home-use-only videotape in a classroom with the reasoning that educators have the right to display or perform works in face-to-face teaching situations. A review of the literature indicates that the videotape must meet an instructional goal and not be entertainment for the students.

## DISPLAYS, PERFORMANCES, AND COPYING OTHER AUDIOVISUAL WORKS

If there were no exceptions to the five exclusive rights of the copyright owner (the rights to reproduce, prepare derivative works, perform, display, and distribute the copyrighted work) no audiovisual materials could be used in a school. The material would be displayed or performed and would violate the copyright law.

To protect educators when using copyrighted audiovisual materials in a class, the following conditions must be met:

### **YOU MAY USE AUDIOVISUAL MATERIALS WHEN**

1. It is shown as part of the instructional program.
2. It is shown by students, teachers, or guest speakers.
3. It must be shown in the classroom, studio, workshop, library, gym, auditorium.
4. It must be shown in a face-to-face teaching situation or in the same building or general area.
5. It must be shown only to students or educators.
6. Copyright notice must be included, and it must be a legitimate copy.

### **YOU MAY NOT USE AUDIOVISUAL MATERIALS WHEN**

1. It is for entertainment or recreational purposes and unrelated to a teaching activity.
2. It is transmitted by radio or television from an outside location (such as closed circuit from another building).
3. It is shown to an audience other than students or teachers, even when students or teachers are present.
4. You may not use an illegally acquired or duplicated copy.

## GUIDELINES FOR COPYING MUSIC

The GUIDELINES FOR EDUCATIONAL USES OF MUSIC are not a part of the law but are helpful in determining when copying music is allowed.

### **COPYING FOR PERFORMANCE**

Emergency copying is allowed only if the purchased copies are not available for a performance. The photocopies must then be destroyed.

### **COPYING FOR ACADEMIC PURPOSES**

Single or multiple copies of excerpts may be made if less than 10% of the whole work and if it is not a performable unit such as a selection, movement, or aria.

Purchased music may be edited if the fundamental character of the work is not distorted or the lyrics altered or added if none exists.

A single copy of an entire performable unit can be made if it is out of print or unavailable except in a larger work. It can't be used for performance.

A single recording may be made for aural exercises or tests and may be retained by the school or teacher.

A single copy may be made as a free service for the blind.

A single copy of a student performance may be made for study and for archives.

A single copy may be made for preservation or replacement in the library when copies are not available for purchase.

### **COPYING THAT IS PROHIBITED**

You can't copy to create, replace, or substitute for anthologies, compilations, or collective works.

You can't copy to avoid purchase.

The following are the addresses of the three performing rights organizations:

American Society of Composers, Authors & Publishers (ASCAP)  
One Lincoln Plaza  
New York, NY 10023  
(212) 595-3050

Broadcast Music, Inc. (BMI)  
40 West 57th Street  
New York, NY 10019  
(212) 586-2000

SESAC, Inc.  
156 W. 56th Street  
New York, NY 10019  
(212) 586-3450

Dramatico-musical works are licensed by the publisher or, in some instances, by these licensing agencies:

Tams-Witmark Music Library, Inc.  
757 Third Avenue  
New York, NY 10017

Rodgers & Hammerstein Library  
598 Madison Avenue  
New York, NY 10022  
(212) 486-7378

Music Theatre International  
119 West 57th Street  
New York, NY 10019

Samuel French, Inc.  
25 West 45th Street  
New York, NY 10036  
(212) JU2-4700

The following is the address of the agency which handles recording rights for most music publishers:

The Harry Fox Agency  
205 E. 42nd Street  
New York, NY 10017  
(212) 370-5330

## SCHOOL MEDIA CENTERS AND COPYRIGHTED MATERIAL

### AUDIOVISUAL MATERIALS

A school media center may make one copy and circulate the following if it is only a replacement for lost, stolen, or damaged materials that can't be replaced at a fair price:

musical works  
pictorial, graphic, or sculptural works  
motion pictures

### PHOTOCOPYING

A school media center may photocopy a work if damaged and if a replacement is not available at a fair price.

A school media center may photocopy small excerpts of a work (i.e., one article in a magazine) for a student or for interlibrary loan.

A school media center may photocopy the same excerpt on separate occasions if it is not systematic or a substitute for purchase.

The school media center cannot charge for more than the cost of the photocopy.

All photocopies must have a notice of copyright similar to this:

This copy is being furnished for private research use only. It may not be further reproduced, resold, or used for publication. The customer assumes full responsibility for copyright questions that may arise concerning this reproduction or the use of the material.

Jones High School

OR

This photocopy was made under provisions of Section 108 of the Copyright Act of 1976

## COPYRIGHT AND COMPUTER SOFTWARE

The Copyright Act of 1976 and the Computer Software Copyright Act of 1980 do not give educators crystal clear guidelines as to when computer software may be copied. There has also been no definitive judicial guidance.

Interpretations of the law have been made by several experts, and the following is a summary of those interpretations.

### **YOU CAN**

You can make an archival or back-up copy of a software program that you own. The back-up copy is to be used only if the original fails. You can't use the back-up copy on a second microcomputer simultaneously with the master copy.

You can adapt the program to your use by adding to the content or adapting it to another language. You can't sell, distribute, or transfer the adapted version of that program.

You can loan the computer software in the school media center.

### **YOU CAN'T**

You can't make multiple back-up copies.

You can't make one copy for home and one copy for school.

You can't make a copy for a friend (unless it's public domain)

You can't transmit through a network outside of a school building.

### **FAIR USE AND SOFTWARE**

Educators are concerned about their rights under the provision of Fair Use. As you must meet all four Fair Use criteria, it is not reasonable to use Fair Use as the rationale for copying. A review of the literature indicates that copying computer software for short term, emergency use may be allowed.

### **COMPUTER LABS**

Software use in computer labs is a gray area in some regards. There are differing views of what is allowable. The basic difference in opinion stems from the misunderstanding of what constitutes a copy of computer software.

There are two definitions of making a copy of computer software.

Under the law, educators are allowed to make one back-up copy, and this copy cannot be used at the time the original is being used. You cannot make several copies of one program for students to use in a lab (even though you have purchased a program, you have not purchased the right to copy the program).

A copy of a computer program is also being made when loaded into the memory of a computer. If you load one program into several microcomputers to be used

at the same time, you are making illegal copies and are violating the law. This instance of copying is often overlooked by educators because it produces an intangible copy. This interpretation of copying, although difficult to understand, is accepted by many legal experts whose articles were reviewed for this publication.

### **YOU MAY NOT**

Here is an example of what one expert suggests what you may and may not do with multiple microcomputers. You would likely be in violation of the law if you load one program into several microcomputers for use at the same time. (Assuming the program was not packaged and sold for that very purpose). The key here is simultaneous use. To get around this problem of multiple loads for simultaneous use, some companies are using multi-copy pricing and licensing provisions.

### **YOU MAY**

Therefore, it would appear that you can use one program sequentially on several microcomputers. That is, load in one microcomputer, use it, turn off the microcomputer, load into another microcomputer, etc. Again, the key is simultaneous use. Simultaneous use is likely in violation of the copyright law; sequential use is not.

### **LICENSING AGREEMENTS**

Some software programs have a statement on the shrink-wrap or the cover that you agree to the conditions for using the program as therein stated. Occasionally the conditions may seem prohibitive.

There have been no judicial guidelines as to whether these licensing statements are legally binding. Until there are some legal guidelines, the experts reviewed for this publication urge educators to be cautious when using any programs with this type of statement.

## HOW TO REQUEST PERMISSION TO DUPLICATE COPYRIGHTED MATERIAL

The request to duplicate should be sent, together with a self-addressed return envelope, to the permissions department of the publisher or directly to the copyright holder and should include the following information:

1. Title, author, and/or editor, and edition of materials to be duplicated.
2. Exact material to be used, giving amount, page numbers, and possibly a photocopy of the material.
3. Number of copies to be made.
4. Use to be made of duplicated materials.
5. Form of distribution (classroom, newsletter, etc.)
6. Whether or not the material is to be sold.
7. Type of reprint (ditto, photocopy, offset, typeset).

Don't ask for blanket permission to copy.

## QUESTIONS AND ANSWERS

The answers to these copyright questions are based upon the opinions of experts in the copyright area whose writings have been reviewed for this publication.

### **COPYING FROM BOOKS AND PERIODICALS**

- Q. May a teacher make a transparency from a book?  
A. Yes, this falls within the guidelines of single copying for classroom use.
- Q. Can a teacher duplicate materials and put them on reserve at the library?  
A. Yes, if the copying is spontaneous and if copying falls under guidelines for education or classroom use of books and periodicals or is a fair use.
- Q. A teacher finds an O. Henry short story that would fit into a unit to be taught next week. Can multiple copies be made for the class?  
A. Yes, since it was at the inspiration of the teacher and also meets the criteria of brevity. The copies can't be used next term.
- Q. Can a teacher make copies from a workbook?  
A. No, workbooks are consumable materials and can't be copied.
- Q. Some materials are marked as follows: "All rights reserved. No part of this book may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the publisher." Can this material still be copied for educational purposes?  
A. Yes, fair use would still apply.
- Q. A teacher ran across a book that has no copyright notice. Can copying be done freely in this instance?  
A. No one can be certain that work is in the public domain unless a notice states that reproduction is permitted. When in doubt about copyright status, ask for permission to copy or contact the Copyright Office.
- Q. How strict are the Guidelines for Classroom Copying?  
A. The purpose of the guidelines is to state the minimum and not the maximum standards of educational fair use. There may be instances where copying doesn't fall within the guidelines but is permissible under the criteria of Fair Use.

### **COPYING MUSIC**

- Q. In order to avoid damaging records, the media center has made cassette tapes for circulation.  
A. This is not allowed because: a.) it is a substitute for purchase of possible replacement copies; and b.) copying of an entire work is not allowed.
- Q. A teacher is making a sound/slide presentation and wants to use several popular songs as background. Is this allowed?  
A. Using portions of songs (less than a performable unit) is probably allowed; however, using an entire song is not.

- Q. The music teacher has changed the lyrics of a song to be presented at the Spring Banquet in order to be more contemporary. Can 30 copies be made for the choir?
- A. No. Altering or adding lyrics changes the fundamental character of a work and is not allowed under the copyright guidelines.
- Q. Several students forgot their music the night of the band performance. Can copies be made just for that night?
- A. Yes, emergency copying to replace purchased copies is allowed. The duplicates must be replaced by the originals.
- Q. A teacher wants to make a cassette copy of a Beethoven record in the media center so that the music can be stopped and started easily. The cassette will be used for the final exam in music.
- A. Yes, one copy of the record can be made for exams or aural exercises and may be retained by the school or teacher.

### **COPYING AUDIOVISUAL MATERIALS**

- Q. The school only has one slide projector. Since the school has several filmstrip projectors, can some of the slides which the school owns be converted into filmstrips?
- A. No, this type of copying is prohibited. Even though the school has purchased the slides, the right to copy the slides was not purchased.
- Q. A couple of teachers have some filmstrips that they would like to combine into one. They will make only one copy that will be used for instructional purposes.
- A. This is not allowed under the guidelines. Written permission must be obtained.

### **COPYING OFF-THE-AIR**

- Q. Can a school tape a movie off-air and use it in the classroom?
- A. Yes, if a teacher specifically requests the copy be made, a notice of copyright is included, it is shown to students within ten school days, it is erased within 45 days (unless you want to preview it at a later date for possible purchase), and is used for instructional rather than entertainment purposes.
- Q. Can a teacher tape a movie at home and show it to the class?
- A. Yes, following the guidelines in the previous answer.
- Q. Can a media specialist videotape a program that the science teacher may want to use in class?
- A. Not really. According to the guidelines, the teacher must request that a specific program be videotaped.
- Q. Can a teacher show last Sunday's Walt Disney cartoon during a rainy recess?
- A. No, the videotape must be used for instructional not entertainment purposes.

- Q. Can the school show a group of parents and students a recently televised program on drugs?
- A. Probably not. The presence of parents constitutes public performance.
- Q. Can a program taped off-air be transmitted to several classrooms via closed circuit?
- A. Probably. Closed circuit may be considered similar to a face-to-face teaching situation. The question comes in when the transmission is from one building to another.

### **USING HOME-USE-ONLY VIDEOTAPE**

- Q. Can you use a videotape in a class if it was rented at a video store?
- A. Probably. The question arises if showing a video to a group of students constitutes a public performance. The experts differ. You can probably show the videotape if it is for instructional, not entertainment, purposes.
- Q. Can you make a copy of a videotape that was rented if it is used only once and within ten days?
- A. No, copying an entire work that you do not have permission to copy is a violation of the copyright law.

### **COPYING COMPUTER SOFTWARE**

- Q. Our school has limited funds. Can we make ten copies of a program to check out from the media center for just a two-week period?
- A. No. You purchased one copy, not the right to make additional copies.
- Q. Once the shrink-wrap is broken, is the school bound by the restrictions on the label?
- A. This is a gray area. Whether the restrictions/warnings are binding will have to be decided in the courts.
- Q. Can a teacher change the language of a computer program?
- A. Yes, the program may be adapted.
- Q. Can a computer program be loaded into six computers so that six students can use it at the same time during class?
- A. Probably not. It is a simultaneous use of the software and is more than likely a violation. Copies are being made when the program is in the computer memory.
- Q. Can you make a copy of a software program so that it can be used at home and at school?
- A. One copy may be made of software that you own, and that is the back-up copy.