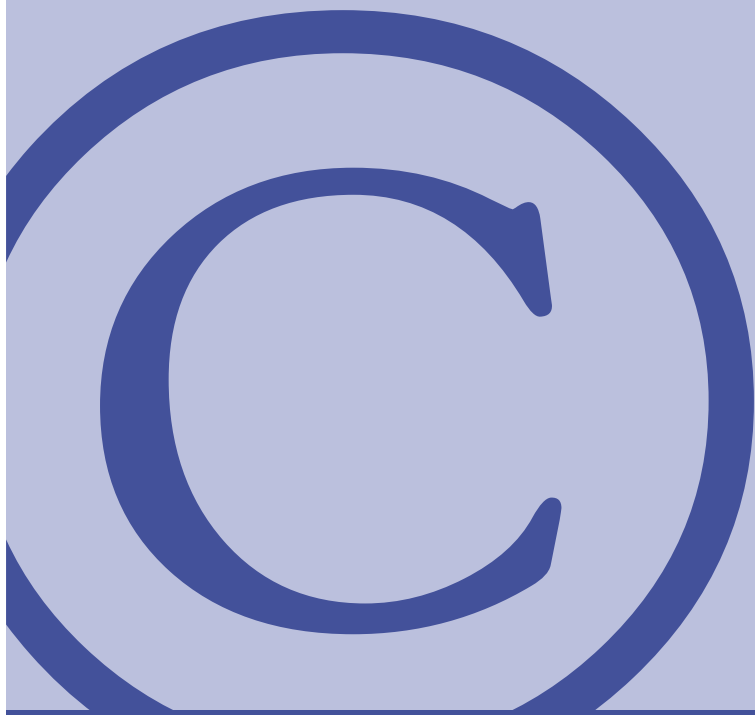

**Educator's
Quick & Essential Guide To
COPYRIGHT**



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PRODUCED THROUGH
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Educators' Quick and Essential Guide to Copyright

HISTORY & GENERAL INFORMATION

Copyright is a very complex subject, partly because the law itself is written so generally that it requires “guidelines” to interpret its intention, but also because new technologies must be shoehorned into old definitions. Former technologies such as the typewriter or filmstrip projector presented few legal problems that couldn’t be easily resolved. Enter the computer, distance learning, and the photocopier and we are dealing with very different issues because of the ability to duplicate, transmit, and even change a work.

Copyright, what is its purpose?

The copyright clause of the Constitution gives Congress the power to grant authors exclusive rights to their works in order to “promote the progress of science and the useful arts.” Copyright is the legal protection provided to a creator for his or her work. It establishes specific rights that belong to that creator and provides penalties for their infringement.

The first United States Copyright Act was enacted in 1790 and was almost an exact wording of earlier English law. Although it has been amended over 30 times since then, we are most influenced by the Copyright Act Revision of 1976, which added a “fair use” clause that is critically important to educational use.

What kinds of works are protected?

Copyright covers any creative product in any format from print to graphical to electronic—books, videos, magazine articles, paintings, illustrations, and cartoons, even e-mail messages.

How long does copyright protection last?

A very long time.—specifically, it lasts for the life of the author plus 70 years or, for works made for hire, 120 years from its creation.

Are there other ways to legally use copyrighted material?

Yes, you can use public domain materials, expired copyrighted materials, U. S. Government materials, or request permission from the copyright holder. You may also use copyrighted material if your use is “fair use.”

What exclusive rights does the copyright holder have?

Section 106 of the Copyright Act specifies these as basic rights of the copyright holder:

- the right to reproduce the work in copies
- the right to make derivative or modified works
- the right to distribute the work to the public
- the right to publicly perform the work
- the right to publicly display the work

1. **Reproduction**—the right to make copies; this right allows only the copyright holder to make copies (such as making a photocopy from a book).
2. **Preparation of Derivative Works**—the right to produce a new version or modification of a work (such as making a sound recording, multimedia presentation, or video from a picture book).
3. **Public Distribution**—the sale, gift, or other transfer of unauthorized copies (includes rental, lease, or distributing photocopies to a class).
4. **Public Performance Rights**—public performances would include literary, musical, and dramatic works, as well as motion pictures, videos, and other audiovisual works, which are performed in an establishment open to the public or where a substantial number of people are gathered who are beyond the normal circle of family and friends (includes showing a film or videotape in a public place).
5. **Public Display**—to display a work by “showing” a film, slide, television image, or videocassette in a public place (includes projecting a picture or text to a viewer; hanging a painting, poster, or photograph in a public place).

FAIR USE

The copyright law seeks to promote the public good by protecting the financial interests of creative individuals through prohibiting unauthorized use of their materials on one hand, while simultaneously permitting criticism, comment, news reporting, teaching, scholarship, and research. From your

experience as educators, you know that these two purposes are often in conflict.

One important way that Congress determined to balance these differing interests is through a provision called Fair Use. Fair Use grants *certain* privileges to *certain* groups, one of them being educators, for *certain* uses of copyrighted works.

The following four factors are used in determining Fair Use:

1. **Purpose and character of the use**—looks at how the materials are used, whether for profit, educational or commercial use. Unfortunately for educators, the absence of financial gain alone does not make use of the work permissible. We can't argue that it is all right because we are using it for educational purposes. The courts look at all four factors.
2. **Nature of the copyrighted work**—considers whether the work is scholarly or commercial. Photocopying a newspaper article is more likely to be considered fair use than copying music or a poem. Copying a research study would be more acceptable than copying a workbook for students. Copying a consumable workbook or a textbook clearly deprives the author of the work of his profit.
3. **Amount and substantiality of the material used**—considers how much and which portions of the work has been used. Reproducing 10 lines of a 20-line poem is very different from reproducing 10 lines of a long novel. Amount is an important factor in the use of both print and multimedia materials, as we will see later on. "Substantiality" addresses how important the portion used is to the whole. The refrain would be much more identifiable than the rest of the lyrics of a song.
4. **The effect of use on the potential market of the work**—requires estimating what the expected purchase of the work might be. If the use is considered to have a negative effect on sales, that use is not likely to be considered fair use. While each of the fair use criteria has a market effect, this one directly concerns potential loss of revenue and is given consideration by the courts.

What is the Fair Use test?

Fair Use guidelines were drawn up by a group representing authors, educators, and publishers. They are only guidelines and do not have the force of law. They are only advisory, but they have come to be accepted as meeting the good faith test for fair use.

1. **Brevity**—dictates that the relative amount copied should be brief, for example, 250 words of a poem, 2,500 words or 10% of an article, etc. Picture books, which are generally brief, must be limited to two pages containing no more than 10% of the total text.
2. **Spontaneity**—means that the inspiration and decision did not allow enough time to write for copyright permission. If a teacher finds a useful article while preparing for a class currently being taught, such use would be permissible. However, that article could not be used the next time the class was taught because there would have been sufficient time to write for copyright permission. Additionally, the copying must occur at the request of the teacher and not be the directive from an administrator or other authority.
3. **Cumulative Effect**—is the aggregate use, or combination of small uses, that amount collectively to such a proportion that economic harm is done. Generally, only one copy can be made, with no more than three coming from the same work for a total of no more than nine instances for one course during one term. Finally, such copies can be used only in one course, not several.

CLASSROOM COPYING OF PRINT MATERIALS — BOOKS, PERIODICALS, ETC.

General Provisions

Teachers may make a single copy for *themselves* (for research or teaching purposes) of:

- a chapter in a book
- an article from a periodical or newspaper

- a short story, short essay, or short poem, whether in an individual or collective work
- a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

Classroom Copies (one for each student)

Materials must carry the copyright notice and meet the three tests of brevity, spontaneity, and cumulative effect.

Brevity:

1. A complete poem if less than 250 words and printed on not more than two pages, or an excerpt from a poem of not more than 250 words.
2. A complete article, story, or essay of less than 2,500 words or an excerpt of not more than 1,000 words or 10% of a work, whichever is less.
3. One chart, graph, diagram, drawing, cartoon, or picture per book or periodical.
4. Not more than two published pages containing less than 10% of a work that combines text and illustrations, such as picture books.

Spontaneity:

1. The copying must be by or at the direction of the individual teacher.
2. The time between preparation and classroom use is too short to request and receive permission.

Cumulative Effect:

1. The copying is only for one course.
2. One short poem, article, story, essay, or two excerpts may be copied from the same author, and not more than three from the same collective work or periodical during one class term.
3. There shall be no more than nine instances of multiple copying for one course during one class term.

AUDIOVISUAL MATERIALS USE

Audiovisual works include filmstrips, slides, kits, films, videotapes, cassettes, CD-ROMs, laserdiscs, DVDs, etc. Certainly the most prevalent audiovisual materials used in the schools are videotapes; and despite the fact that educators have been using them for many

years, they still create the most concern and questions about permissible use.

Rights of the Educator

Section 110 of the U. S. Copyright Law (Fair Use) determines that educators have certain rights to both display and perform audiovisual materials but that these certain conditions must *ALL* be met before use is permissible.

- They must be shown as a part of the instructional program and written into the teacher’s lesson plans.
- They must be shown by students, instructors, or guest lecturers.
- They must be shown either in a classroom or other school location devoted to instruction, such as the media center or auditorium if they are used for instruction.
- They must be shown in a face-to-face setting or where teachers and students are in the same building or general area.
- They must be shown only to students and educators.
- They must be shown using a legitimate (not illegally reproduced) copy with the copyright notice included.

Generally Unacceptable Uses

The following uses are generally not acceptable:

- Used for entertainment, recreation, or even cultural value when unrelated to the teaching activity.
- Transmitted by radio or television (either open or closed circuit) from an outside location.
- Shown in a place such as an auditorium or stadium to an audience that is not confined to students (for example, a PTA meeting), and when the public display is not for criticism, comment, news reporting, or teaching.
- The material was illegally acquired or duplicated.

GUIDELINES / OFF-AIR RECORDING

In accordance with the fair use doctrine, non-profit institutions may record television programs and use these recordings for instructional purposes if they meet the following guidelines, which were developed to apply only to off-air recording by non-profit educational institutions:

1. A broadcast program may be recorded off-air simultaneously with broadcast transmission and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording, after which it must be erased or destroyed immediately. "Broadcast programs" are television programs viewed by the general public without charge.
2. Off-air recordings may be used only once by individual teachers in the course of relevant teaching activities (and repeated only once when instructional reinforcement is necessary), in classrooms and similar places devoted to instruction, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) calendar day retention period.
3. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off air more than once at the request of the same teacher.
4. After the first ten (10) consecutive days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes (i.e., to determine whether or not to include the broadcast program in the teaching curriculum).
5. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content.
6. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
7. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

GUIDELINES FOR SCHOOL USE OF RENTED/PURCHASED PRERECORDED VIDEOCASSETTE PROGRAMS

Teachers may use rented or purchased videocassette only if all the following requirements are satisfied:

1. The programs have been recorded or made in a lawful manner.
2. The programs must be used in the course of face-to-face teaching activities. The teacher must be able to point to specific performance objectives to which the program relates.
3. Programs may be used only in the classroom or similar places devoted to systematic instructional activities.
4. Programs are not to be used for recreational or entertainment purposes.

Cable or Satellite Transmission

Only those cable or satellite programs also available free of charge from open air broadcast may be taped. Pay services, such as HBO, may not be taped.

VIDEOTAPING

Television Programs Taped by Teachers or Parents

Educators may tape television programs in their homes and bring them to school for instructional purposes, but they must follow the Off-Air Guidelines, including the 10/45 day rule (i.e., can show once within 10 days after recording and must erase after 45 days).

Closed Circuit Television Transmission

Closed Circuit broadcast is the ability to transmit programs within a closed or defined area. Showing entire programs over closed circuit television usually requires permission or payment from the copyright holder. Portions of programs shown for news reporting, comment, or criticism may be appropriate.

One way to provide for this usage is to place a statement on the purchase orders citing your intent to use this material over closed circuit television. If the distributor ships the material, it is then all right to assume that they have extended that permission. Equally important is to develop a system for labeling purchased videocassettes to indicate whether or not these rights have been granted.

Purchased Videocassettes

Videocassettes that are purchased from a vendor come only with the rights to perform (or show) and only when the "classroom exception" is met. A teacher may show it to a

class if written into the lesson plan and in face-to-face instruction. Other uses require permissions that must be purchased or requested. For example, showing a video as a reward for good behavior or to entertain requires a permission called “public performance.” Performing (playing) a videocassette over closed circuit television so multiple classes can watch simultaneously requires “closed circuit” rights, because classes other than those studying that subject may be able to view the program. To show The Fourth of July Story to the whole school to increase their patriotic spirit would require both public performance and CCTV rights. However, use of limited portions of The Fourth of July to the whole school for purposes of scholarship, criticism, comment, or teaching may in some circumstances be permissible.

Home Use Only Labeling

If an educational institution purchases a videotape with a “Home Use Only” label, it is permissible to use the tape for face-to-face instructions as described in the Guidelines.

Rental of Videotapes

The rental of videos is permissible as long as the educator follows all of the conditions mentioned previously, unless the rental agreement prohibits the display or performance of the video for educational purposes or on which there is the statement “rentals are for home use only.”

COMPUTER SOFTWARE

With all copyrighted productions/publications, but with computer software in particular, the purchaser buys a copy of the program but not the copyright. Unless specified differently, computer software is sold for a single workstation. Therefore, it may not be loaded onto multiple machines or onto a file server where it could be accessed freely without special permission. Computer software usage rights are often more a matter of license rather than copyright.

Rights of the User

- to make an archival copy to guard against damage or destruction

- to make the necessary adaptations to use the program correctly on a computer or peripheral
- to use a commercial copy program to “unlock” a program in order to make an archival copy
- to install a CD-ROM set-up on more than one machine, as long as it is used on only one machine at a time
- to make a temporary copy of a program to use on another computer during computer maintenance

Rights of the Copyright Holder Regarding Computer Technology

- Reproduction occurs when:
 - a work is placed into a computer and copied (whether on disk, ROM, or RAM for more than a very brief period)
 - a printed work is “scanned” into a digital file
 - a photograph or sound recording is digitized
- Derivative works occur when a work:
 - is annotated, edited, translated
 - has the content of its files changed

Prohibitions for Educators

- Copyrighted programs may not be reproduced on school equipment except for those for which rights have been procured.
- Copies of programs which have been reproduced in violation of copyright law may not be used on school equipment.

MULTIMEDIA FAIR USE GUIDELINES

Students

Students may incorporate portions of *lawfully acquired copyrighted materials* when producing their own educational multimedia projects *for a specific course*.

Students may perform and display their own educational multimedia projects *in the course for which they were created*.

Students may retain these projects in their own portfolios as examples of their academic work for later personal uses such as job and higher education interviews.

Educators

Educators may incorporate portions of *lawfully acquired copyrighted materials* when producing their own educational multimedia projects for their own teaching tools *in support of curriculum-based instructional activities*.

Educators may perform and display their own educational multimedia projects for curriculum-based instruction to students in the following situations:

- face-to-face instruction
- directed self-study
- remote instruction to students enrolled in curriculum-based courses and located at remote sites (distance learning)

Educators may perform or display their own educational multimedia projects in presentations to their peers, for example, at workshops or conferences.

Educators may retain their educational multimedia projects in their personal portfolios for later personal use, such as annual evaluations or job interviews

General Limitations for Both Students and Educators

- Time limit on fair use: two years from completion of the multimedia work for educators, no time limit for students.
- Typical portion limits:
 - motion media – up to 10% or three minutes, whichever is less
 - text – up to 10% or 1,000 words, whichever is less
 - > poem – up to 250 words, but further limited to:
 - three poems or portions of poems by one poet, or
 - five poems or portions of poems by different poets from an anthology
 - music – up to 10% or 30 seconds, whichever is less, of the music and lyrics from an individual work or an aggregate of extracts from a work
 - photos and images – up to five works from one author; up to 10% or 15 works, whichever is less, from a collection

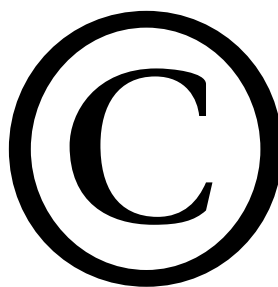
- Copies limit: generally only two, but joint work creators may each have a copy.

SCANNING

Scanners convert print and graphical material to a digitized or computer readable format, which is a form of adaptation or one of the five rights of the copyright holder. However, Fair Use allows some educational usage of this format.

- Only limited amounts of copyrighted materials may be converted from print to digital format without the copyright holder's permission.
- Students may scan limited amounts of copyrighted material (see Multimedia Guidelines) into a project, which can only be shown to the class for which it was produced.
- A staff member cannot scan a cartoon or article into a newsletter for distribution to faculty or parents unless for criticism, comment, or news reporting.
- Public domain print materials may be scanned, but purchased clip art may not unless specific permission is given by the copyright holder as a part of the purchase agreement.

Depending on the use of the scanned image, either photocopying or multimedia guidelines should be followed.



ARE THESE SCENARIOS COPYRIGHT / COPYWRONG?

- The school enrollment increases beyond expectation and teachers have more students than workbooks. Teachers copy workbook pages as needed for classroom instruction.

Wrong – see Fair Use #4. Small amounts are allowed until the new workbooks arrive, but copying entire works is prohibited.

- A teacher asks the media specialist to dub (copy) a video from the school’s collection so she can have her own classroom copy.
Wrong – see Video. Reproduction is a right of the copyright owner.
- An art student is creating a multimedia presentation of old master paintings. He scans in a dozen pictures from a library book.
Wrong – see Multimedia. Only limited portions can be legally scanned because while the painting may be beyond date limits, the publication date of the book being copied is not.
- The school’s monthly focus is patriotism and all students have been given

assignments dealing with patriotism. They open morning announcements with a small amount of music from a teacher’s CD.

Maybe – see Multimedia limitations. Up to 10% or 30 seconds, whichever is less, of music can be legally excerpted from a copyrighted work.

- A teacher promises her students a “story video” on Friday if everyone completes their homework.
Wrong – see Guidelines for School Use #4. Fair Use only allows for curricular use.
- A student creates a classroom presentation on the topic of space by combining text and photographs from several Internet sites.
Maybe – see Multimedia Fair Use Guidelines. Graphic and text limits would need to be followed.

COPYRIGHT BASICS
A Brief Summary

Copyright defined	Copyright is the legal protection provided to a creator for his or her work— books, videos, magazine articles, paintings, illustrations and cartoons, even e-mail messages.
Rights of the owner	The copyright holder has the right to reproduce the work in copies, make derivative or modification of the work, distribute the work to the public, as well as publicly perform or display the work.
Fair Use	Fair Use provides certain rights to educators. Each of the following four factors must be considered in determining Fair Use: purpose and character of the use, nature of the copyrighted work, amount and substantiality of the material used, and the effect of the use on the potential market.
Fair Use test	Brevity – the relative amount copied, should be brief. Spontaneity – the inspiration and decision did not allow time to write for copyright permission. Cumulative effect – the combination of small uses that amount collectively to such a proportion that economic harm is done.
Guidelines for classroom copying	Poetry – a complete poem, if less than 250 words or an excerpt of not more than 250 words. Article, story, essay – less than 2,500 words, if complete; 1,000 words or 10%, if an excerpt. Chart, graph, diagram, drawing, cartoon, or picture – 1 per book or periodical. Picture books – 2 published pages or less than 10% of a work.
Rights of the educator – audiovisual materials	Educators can display and perform audiovisual materials if all these conditions are met: <ul style="list-style-type: none"> • shown as a part of an instructional lesson and written into the lesson plan • shown by students, instructors, or guest lecturers • shown in a classroom or other school location devoted to instruction • shown in a face-to-face setting • shown only to students and educators • shown, using a legitimate copy
Multimedia Guidelines	The guidelines specify limits on the use of copyrighted material for multimedia productions. Typical portion limits are as follows: <ul style="list-style-type: none"> • motion media – up to 10% or three minutes, whichever is less • text – up to 10% or 1,000 words, whichever is less music – up to 10% or 30 seconds, whichever is less, of the music and lyrics photos and images – up to five works from one author; up to 10% or 15 works, whichever is less, from a collection.
Video	Off-air recordings – may be freely taped from regular broadcast channels (but not from those which charge a fee), following these guidelines: <ul style="list-style-type: none"> • made only at the request of and used by individual teachers • retained for a period not to exceed the first 45 consecutive calendar days after the recording • used only once by individual teachers in the course of relevant teaching activities (and repeated once, only when instructional reinforcement is necessary) • used only for teacher evaluation purposes after the first 10 days • copyright notice is included Rented or purchased videos: <ul style="list-style-type: none"> • must be used in face-to-face teaching • used only in the classroom or similar place of instruction • may not be used for recreational or entertainment purposes