

The Fair Use Doctrine

What Is the Fair Use Doctrine?

The Fair Use doctrine is a section of the Copyright Act of 1976 that allows for limited circumstances in which copies of a work may be made without the express written permission of the copyright owner “for purposes such as criticism, comment, news reporting, teaching..., scholarship, or research...” (18).

Since I am an educator, shouldn't all materials copied for my students be fair use?

No. While educational use is one of the permitted uses under the Fair Use Doctrine, it is not the only criterion that must be met in order for a use to be considered fair use.

Factors in Determining Whether *Your Use Is a Fair Use*

There are four basic factors to consider when determining whether copying falls under the fair use exemption. In order for an instance of copying to fall under the fair use exemption, it must meet the criteria for each of these factors.

- **The purpose and character of the use** (17 USC Sec. 107). If you are an educator at an *accredited non-profit institution* making a copy or copies to assist in the teaching of a class and are not charging students for the copies, you can check this one off the list.
- **The nature of the copyrighted work** (17 USC Sec. 107). Is the work meant to be consumable, such as a workbook? If so, then you should not be making copies without express written permission from the copyright owner.
- **The amount and substantiality of the portion used in relation to the copyrighted work as a whole** (17 USC Sec. 107). There are specific limitations on the amounts of a work that may be copied and the number of copies that may be made. Please see the *Guidelines for Classroom Copying* for more information.
- **The effect of the use upon the potential market for or value of the copyrighted work** (17 USC Sec. 107). Plainly worded, is your use going to inhibit a copyright owner's ability to market or sell his or her work? Please see the *Guidelines for Classroom Copying* section for more information.

Guidelines for Classroom Copying

For educators, a *single copy* of any of the following items may be made for the purposes of performing scholarly research, in preparation for teaching a class, or for use in teaching a class:

- “a chapter from a book;
- an article from a periodical or newspaper;

- a short story, short essay or short poem, whether or not from a collective work;
- or, a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper” (17 USC Sec. 107).

For educators, *multiple copies* of a work may be made by or for a teacher for use in the teaching of a class provided that the following criteria are met:

- “the number of copies does not exceed the number of pupils;
- each copy includes a notice of copyright;
- and, the copying meets the tests of *brevity, spontaneity, and cumulative effect*” (17 USC Sec. 107).

What is Brevity?

Classroom copying instances which meet the test for brevity include:

- “a complete poem of less than 250 words, printed on no more than 2 pages;
- an excerpt from a longer poem not to exceed 250 words;
- ...a complete article, story, or essay of less than 2500 words;
- an excerpt from an article, story, or essay of at least 500 words, not to exceed 1000 words or 10% of the work, whichever is less;
- ...One chart, graph, diagram, drawing, cartoon or picture per book or periodical issue;”
- and, copies of “special works”, which generally refers to graphic novels or illustrated children’s books, may not exceed 10% of the text and must be less than two pages in length (17 USC Sec. 107).

What is Spontaneity?

In order for an instance of classroom copying to meet the test for spontaneity, the copying must be “at the instance and inspiration of the individual teacher” (17 USC Sec. 107). In addition, “the inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission” (17 USC Sec. 107). For example, suppose you read an article in the Wednesday paper that would fit perfectly into your lecture for your political science 101 class on Monday. This would be an acceptable fair use exemption. It is extremely unlikely that you would be able to contact the rights owner and receive permission in time to use it for your lecture.

What is Cumulative Effect?

Classroom copying instances will only meet the test for cumulative effect if the instance(s) of copying meet three basic guidelines.

- “The copying of the material is for only one course in the school in which the copies are made” (17 USC Sec. 107). Referring back to the previous example, suppose the article

would fit into the lecture for both your political science 101 and 202 classes. You may only distribute it to students of one of these courses.

- “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” (17 USC Sec. 107).
- “No more than nine instances of such multiple copying for one class during one term shall take place” (17 USC Sec. 107).

Special Prohibitions

In addition to each instance of classroom copying meeting the tests for brevity, spontaneity, and cumulative effect, the following restrictions have been placed on instances of multiple classroom copying:

- copying cannot be used to substitute for or replace anthologies, compilations, or collective works;
- consumable works including workbooks, exercises, standardized tests, test booklets, and answer sheets cannot be copied;
- copies cannot substitute for the purchase of books, be directed by higher authority, or be repeated from term to term;
- and, if instructors are charging students for the copies, they cannot charge more than the actual cost of the photocopying (17 USC Sec. 107).