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Educational Uses of Non-coursepack Materials

Unlike academic coursepacks, other copyrighted materials can be used without permission in certain educational circumstances under copyright law or as a fair use. “Fair use” is the right to use portions of copyrighted materials without permission for purposes of education, commentary, or parody. Special fair use rules for educational purposes are discussed in this section. Fair use rules for educational uses are very specific and, if complied with, can generally prevent lawsuits—which is not the case for general fair use principles.

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Educational Fair Use Guidelines

Publishers and the academic community have established a set of educational fair use guidelines to provide “greater certainty and protection” for teachers. While the guidelines are not part of the federal Copyright Act, they are recognized by courts and the Copyright Office as minimum standards for fair use in education. A teacher or pupil following the guidelines can feel comfortable that a use falling within these guidelines is a permissible fair use and not an infringement.

The educational use guidelines can be found in Circular 21, provided by the Copyright Office.

Keep in mind that none of these guidelines permit creation of coursepacks. They only allow uses that involve copying much less material than in a coursepack. This section answers some basic questions about these guidelines.

Coursepack Permission Agreement

(“Licensor”)

(“User”)

Department:

School Name:

Course name and number: (*“the Course”*).

Date when Course starts: (*the “Course date”*).

Authorization

Licensor authorizes User to photocopy the Selection, as defined below, for purposes of creating a photocopy anthology (the “Coursepack”) for sale or distribution to students and academic customers in the Course.

Number of Copies & Assembly

copies of the Coursepack shall be assembled and distributed for the Course:

by User

by on-campus bookstores or copy centers, or

by off-campus copy shops.

Number of pages (or actual page numbers) to be used .

The permission granted in this Agreement is limited to the Course and institution listed above and to be used for one semester only. Any further rights must be negotiated separately.

Material for Which Permission Is Sought

Title of text or artwork: [L][SEP] (the “Selection”).

Author:

Source publication (*or product from which it came*):

If from a periodical, the ISSN, volume, issue, and date. If from a book, the ISBN: [L][SEP] .

If from the Internet, the entire URL address:

Credit

A standard credit line including Licensor’s name will appear where the Selection is used. If you have a special credit line you would prefer, indicate it here: [L][SEP] .

Fee

User shall pay a fee of \$ _____ to Licensor at the following address: [L][SEP][SEP] within 30 days of commencement date, listed above.

Warranty

Licensor warrants that it is the owner of rights for the Selection and has the right to grant the permission to republish the materials as specified above.

(User signature)

Name:

Title:

Address:

Date:

Permission Granted By: *(Licensor signature)*

Name:

Title:

Address:

Date:

The Code of Best Practices in Fair Use for Media Literacy Education

In 2008, the Center for Media and Social Impact, in connection with American University, unveiled a guide of fair use practices for instructors in K–12 education, in higher education, in nonprofit organizations that offer programs for children and youth, and in adult education. The guide identifies five principles that represent acceptable practices for the fair use of copyrighted materials. You can learn more at the center’s website, (www.cmsimpact.org). Click “Resources.”

Guidelines Establish a Minimum, Not a Maximum

In a case alleging 75 instances of infringement in an educational setting, 70 instances were not infringing because of fair use and for other reasons. The infringements were alleged because of the posting of copyrighted books within a university’s e-reserve system. The court viewed the Copyright Office’s 1976 Guidelines for Educational Fair Use as a minimum, not a maximum standard. The court then proposed its own fair use standard—10% of a book with less than ten

chapters, or of a book that is not divided into chapters, or no more than one chapter or its equivalent in a book of more than ten chapters. *Cambridge University Press v. Georgia State University*, Case 1:08-cv-01425-OD (N.D. Ga., May 11, 2012).

What Is the Difference Between the Guidelines and General Fair Use Principles?

The educational guidelines are similar to a treaty that has been adopted by copyright owners and academics. Under this arrangement, copyright owners will permit uses that are outlined in the guidelines. In other fair use situations, the only way to prove that a use is permitted is to submit the matter to court or arbitration. In other words, in order to avoid lawsuits, the various parties have agreed on what is permissible for educational uses, codified in these guidelines.

What Is an “Educational Use”?

The educational fair use guidelines apply to material used in educational institutions and for educational purposes. Examples of “educational institutions” include K-12 schools, colleges, and universities. Libraries, museums, hospitals, and other nonprofit institutions also are considered educational institutions under most educational fair use guidelines when they engage in nonprofit instructional, research, or scholarly activities for educational purposes.

“Educational purposes” are:

- noncommercial instruction or curriculum-based teaching by educators to students at nonprofit educational institutions
- planned noncommercial study or investigation directed toward making a contribution to a field of knowledge, or
- presentation of research findings at noncommercial peer conferences, workshops, or seminars.

Rules for Reproducing Text Materials for Use in Class

The guidelines permit a teacher to make one copy of any of the following: a chapter from a book; an article from a periodical or newspaper; a short story, short essay, or short poem; a chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.

Teachers may photocopy articles to hand out in class, but the guidelines impose restrictions. Classroom copying cannot be used to replace texts or workbooks used in the classroom. Pupils cannot be charged more than the actual cost of photocopying. The number of copies cannot exceed more than one copy per pupil. And a notice of copyright must be affixed to each copy.

Examples of what can be copied and distributed in class include:

- a complete poem if less than 250 words or an excerpt of not more than 250 words from a longer poem

- a complete article, story, or essay if less than 2,500 words or an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less; or
- one chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

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 (for example, a magazine or newspaper) during one class term. As a general rule, a teacher has more freedom to copy from newspapers or other periodicals if the copying is related to current events.

The idea to make the copies must come from the teacher, not from school administrators or other higher authority. Only nine instances of such copying for one course during one school term are permitted. In addition, the idea to make copies and their actual classroom use must be so close together in time that it would be unreasonable to expect a timely reply to a permission request. For example, the instructor finds a newsweekly article on capital punishment two days before presenting a lecture on the subject.

Teachers may not photocopy workbooks, texts, standardized tests, or other materials that were created for educational use. The guidelines were not intended to allow teachers to usurp the profits of educational publishers. In other words, educational publishers do not consider it a fair use if the copying provides replacements or substitutes for the purchase of books, reprints, periodicals, tests, workbooks, anthologies, compilations, or collective works.

Rules for Reproducing Music

A music instructor can make copies of excerpts of sheet music or other printed works, provided that the excerpts do not constitute a “performable unit,” such as a whole song, section, movement, or aria. In no case can more than 10% of the whole work be copied and the number of copies may not exceed one copy per pupil. Printed copies that have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics altered (or added to).

A student may make a single recording of a performance of copyrighted music for evaluation or rehearsal purposes, and the educational institution or individual teacher may keep a copy. In addition, a single copy of a sound recording owned by an educational institution or an individual teacher (such as a tape, disc, or cassette) of copyrighted music may be made for the purpose of constructing aural exercises or examinations, and the educational institution or individual teacher can keep a copy.

Instructors may not:

- copy sheet music or recorded music for the purpose of creating anthologies or compilations used in class
- copy from works intended to be “consumable” in the course of study or teaching such as workbooks, exercises, standardized tests and answer sheets, and like material

- copy sheet music or recorded music for the purpose of performance, except for emergency copying to replace purchased copies which are not available for an imminent performance (provided purchased replacement copies are substituted in due course); or
- copy any materials without including the copyright notice which appears on the printed copy.

If copyrighted sheet music is out of print (not available for sale), an educator can request permission to reproduce it from the music publisher. Information about contacting music publishers is provided in Chapter 5. A library that wants to reproduce out-of-print sheet music can use a system established by the Music Publishers Association by downloading and completing a form called the “Library Requisition for Out-of-Print Copyrighted Music” from the Association’s website at www.mpa.org/sites/mpa.org/files/library%20requisition.pdf.

Rules for Recording and Showing Television Programs

Nonprofit educational institutions can record television programs transmitted by network television and cable stations. The institution can keep the tape for 45 days, but can only use it for instructional purposes during the first ten of the 45 days. After the first ten days, the video recording can only be used for teacher evaluation purposes, to determine whether or not to include the broadcast program in the teaching curriculum. If the teacher wants to keep it within the curriculum, he or she must obtain permission from the copyright owner. The recording may be played once by each individual teacher in the course of related teaching activities in classrooms and similar places devoted to instruction (including formalized home instruction). The recorded program can be repeated once if necessary, although there are no standards for determining what is and is not necessary. After 45 days, the recording must be erased or destroyed.

A video recording of a broadcast can be made only at the request of and only used by individual teachers. A television show may not be regularly recorded in anticipation of requests—for example, a teacher cannot make a standing request to record each episode of a PBS series. Only enough copies may be reproduced from each recording to meet the needs of teachers, and the recordings may not be combined to create teaching compilations. All copies of a recording must include the copyright notice on the broadcast program as recorded and (as mentioned above) must be erased or destroyed after 45 days.

In this Section:

- **Copyright Overview (NOLO)**
 - **Academic and Educational Permissions**
 - **Educational Uses of Non-coursepack Materials**

Comments are closed.

The content for the Copyright and Fair Use Overview section is from **NOLO**, with much of it taken from the book **Getting Permission** (October 2019) by **Richard Stim**. Thanks!

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Presented by the Berkeley Center for Law & Technology

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