

# Overview of Fair Use

Fair Use is a defense to an allegation of infringement under the U.S. Copyright Law that permits limited use of portions of a copyrighted work without the copyright owner's permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Section 107 of the Copyright Act establishes four basic factors to be considered in deciding whether a use constitutes a fair use. These factors are:

- The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit, educational purposes.
- The nature of the copyrighted work.
- The amount and substantiality of the portion used in relation the copyrighted work as a whole.
- The effect of the use upon the potential market for or value of the copyrighted work.

No one factor alone determines a person's right to use a copyrighted work without permission.

Although Section 107 of the Copyright Act includes teaching, scholarship, and research, along with making multiple copies for classroom use as among the uses of copyrighted works that may qualify as fair use, none of these uses automatically qualifies as a fair use. Both Congress and the Supreme Court have rejected the notion that all educational uses or all uses by educational institutions are fair uses. There is no blanket exemption from copyright liability for educational uses or uses by educational institutions.

Two sets of guidelines, known as the Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals and the Guidelines for Educational Uses of Music, were explicitly accepted as part of their understanding of fair use by the House and Senate conferees when Congress enacted the most recent comprehensive reform of U.S. copyright law in the Copyright Act of 1976. More recently, a large number of representatives of these communities participating in a two-year long

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Conference on Fair Use (CONFU) attempted to reach agreement on several different sets of educational fair use guidelines regarding digital images, distance learning, educational multimedia, electronic reserve systems, interlibrary loan and document delivery, and use of computer software in libraries. Although none of these proposed guidelines received the full endorsement of the CONFU participants, the proposed guidelines were deemed sufficiently advanced to be published in the final report on the Conference that was made to the Commissioner of Patents and Trademarks in November, 1998.

Getting permission to copy is a critically important aspect of abiding by the fair use rules. In general, the permissions process involves 5 steps:

- Determine if permission is needed
- Identify the owner
- Identify the rights needed
- Contact the owner and negotiate whether payment is required
- Get your permission agreement in writing

In copyright infringement cases, faculty and nonprofit educational institutions are essentially exempt from paying certain types of damages such as statutory damages, even when an infringement occurred. However, this exemption only applies when the person responsible for the infringement believes they were following fair use and is able to demonstrate best efforts to comply.

The fair use code is simple, but for further information please see the [Stanford University Copyright and Fair Use Web site](#).

The TEACH Act may be viewed as an extension of Fair Use to electronic classroom conditions.