

XVI. COPYRIGHT ACT REQUIREMENTS

Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works. Section 106 of the Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following.

- * To reproduce the copyrighted work in copies or photo-records.
- * To prepare derivative works based upon the copyrighted work.
- * To distribute copies or photo-records of the copyrighted work to the public by sale or other transfer of ownership, or by the rental, lease, or lending;
- * To perform the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; and
- * To display the copyrighted work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work.

It is illegal for anyone to violate any of the rights provided by the Act to the owner of copyright. These rights, however, are not unlimited in scope. Sections 107 through 118 of the Copyright Act establish limitations on these rights. In some cases, these limitations are specified exemptions from copyright liability. One major limitation is the doctrine of "fair use," which is given a statutory basis by section 107 of the the Act. In other instances, the limitation takes the form of a "compulsory license" under which certain limited uses of copyrighted works are permitted upon payment of specified royalties and compliance with statutory condition. For further information about the limitations of any of these right, consult the Copyright Act or write to the Copyright Office.

1. HOW TO FIND OUT WHO OWNS THE COPYRIGHT FOR A PARTICULAR WORK

You should consult both the page containing the copyright notice as well as any acknowledgement pages in the work. If you have a photocopy or other reproduction that does not contain a notice of copyright or acknowledgments, you should consult an original copy of the work to determine if the original has the information you need.

Most works contain a notice of copyright. However, the information contained in such copyright notice may not always reflect accurately the identity of the current copyright owner of the material in question.

- * The absence of a copyright notice does not mean that the work in question may be freely copied.
- * The best method for determining copyright ownership is by contacting the publisher of the work that you wish to copy.

2. PENALTIES FOR COPYRIGHT INFRINGEMENT

Civil and criminal penalties may be imposed for copyright infringement. Civil remedies include an award of monetary damages (substantial statutory damages which in cases of willfulness may total up to \$100,000 per work infringed, or actual damages including the infringed profits), an award of attorney's fees, injunctive relief against future infringement and the impounding and destruction of infringing copies and the plates or other articles used in making such copies.

3. HOW "FAIR USE" DOCTRINE AFFECTS COPYRIGHTED MATERIALS

The Doctrine of "Fair Use" under the U.S. copyright law in limited situations permits the use of copyrighted work, including reproducing portions of that work without the copyright owner's permission. Section 107 of the Copyright Act establishes four basic factors to be examined in determining whether a use is the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes:

- the nature of the copyrighted work;
- amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

No one factor is determinative of a person's right to use a copyrighted work without permission. (Educational use alone is not sufficient to make a use in question a fair one.)

4. FAIR USE DOCTRINE APPLIED

In a very recent case (February 12, 1996), the Sixth Circuit court of appeals held that it was not a violation of copyright law for a group of University of Michigan professors to collect excerpts out of six separate works to put together an anthology.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

In *Princeton University Press v. Michigan Document Service* (6th Cir. 1996) 1996 U.S. App. LEXIS 1919, the court applied the four factors above and found: (1) that creation of the anthology only slightly transformed the original work, and that the work was only for classroom use. (2) the works were protected by copyright; (3) the works were not excerpted substantially enough to supersede the original and (4) because the students who used the anthology were not a market for purchase of the original work. There was no evidence of a market effect. In addition the court weighed an additional factor: the writing was not for monetary compensation, and that they advocated wide dissemination of excerpts from their works without imposing permission fees.

Although the holding in this case would indicate that in most cases a teacher could copy excerpts from texts where the circumstances are substantially similar to those described above, the holding of this court does not apply directly to California, and Districts are still urged to err on the side of caution and obtain permission in advance.

In the legislative history of the 1976 Copyright Act. Congress endorsed certain guidelines relating to classroom copying for educational use. These guidelines are generally considered to establish minimum permissible conduct under the Fair Use Doctrine for unauthorized copying, although some limited copying which does not fall within these guidelines (and which is not expressly prohibited under Prohibitions A through F described below) may still qualify as permissible conduct under the copyright law, copying which does comply with these guidelines generally constitutes permissible conduct under the current copyright law.

One thing is certain... when in doubt, request permission!

The guidelines for making multiple copies without permission for use in an academic setting contain the following prohibitions.

- A. Unauthorized copying may not be used to create, replace or substitute for anthologies, compilations or collective works, whether or not such unauthorized copies are collected and bound together or are provided separately.
- B. Unauthorized copies may not be made of "consumable" works, including workbooks, exercises, standardized tests, test booklets, answer sheets and the like.
- C. Unauthorized copying may not substitute for the purchase of books, publisher's reprints or periodicals.
- D. Unauthorized copying may not be directed by higher authority such as a dean or head of a department.
- E. The same teacher cannot copy the same item without permission from term to term.
- F. No charge shall be made to the student beyond the actual cost of the photocopying.

5. **MAKING A COPY OF AN ENTIRE WORK OR A SUBSTANTIAL PART OF WORK FOR PERSONAL USE**

There is no automatic exemption for making even one unauthorized personal copy of a copyrighted work. Nevertheless, the fair use guidelines discussed above provide that a teacher may make a single copy for scholarly research or for use in teaching or preparing to teach a class of the following works.

- A. A chapter from a book.
- B. An article from a periodical or newspaper.
- C. A short story, short essay or short poem.
- D. A Chart, graph, diagram, drawing, cartoon or picture from a book, periodical or newspaper.

6. **EXCEPTIONS OTHER THAN FAIR USE DOCTRINE**

Works in the public domain may be freely copied, however, collections and edited versions of works in the public domain may be protected by copyright. Works which are in the public domain include works that have never been the subject of copyright protection and works whose term of copyright protection has expired.

For copies of works distributed prior to March 1, 1989, absence of a notice of copyright does not necessarily indicate that the work is in the public domain and therefore freely copyable since a copyright owner may take steps to correct publication of his/her work without notice before the absence of notice results in loss of copyright protection for the work. (Other grounds may also excuse the omission of notice.) For works distributed on or after March 1, 1989, notice is not required. Consequently, the absence of notice cannot be relied upon to indicate that a work is in the public domain.

Similarly, the fact that the author is deceased or the book is out of print does not mean that the work may be copied.

When in doubt about the status of a work, it is best to contact the publisher's copyright permission department to determine whether the work is still under copyright or in the public domain.

Certain works created by the U.S. government, including documents prepared by an office or employee of the federal government as part of that person's official duties, may also be freely copied. The right to copy U.S. government-created works without permission, however, does not extend to documents published by others with the support of the U.S. government funds, grants or contracts, to portions of government documents which contain copyrighted material from other non-government sources, or fully to publishers edited, annotated or compiled versions of such documents.

The guidelines further indicate that multiple copying is allowed in the following situations (unless falling within one of the above prohibitions.)

- A. When an individual teacher is "inspired" to use a work, and the inspiration and decision to use it 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.

and

- B. If the following limitations with regard to the amount of copying of a work are applied.

If a complete article, story or essay is copied, and the work copied is less than approximately 2,500 words. (There are particular rules for certain "special" works which consist of less than 2,500 words.

If a prose work is excerpted and copied, and the excerpt copied is no longer than approximately 1,000 words or 10% of the work, whichever is shorter.

If a chart, graph, diagram, drawing, cartoon or picture is copied, and not more than one such illustration is copied per book or per periodical issue.

If a short poem is copied, and the poem is less than 250 words and printed on not more than two pages, or if an excerpt from a longer poem is copied and the excerpt is not longer than 250 words.

and

- C. The copying is for only one course in the school in which the copies are made.

- D. No more than one short poem, article, story or essay or two excerpts are copied from works by the same author. In addition, no more than three works or excerpts may be copied from the same collective work or periodical volume during one class term and no more than nine instances of such multiple copying may occur for one course during one class term (These guideline limitations of a Paragraph D do not apply to current news periodicals, newspapers, and current news sections of other periodicals.)

and

- E. The original copyright notice must appear on all copies of the work.