

Fair Use Guidelines

The scope of copyright protection is extremely broad. It extends to a wide variety of works in virtually any medium, regardless of whether the work is published, registered with the U.S. Copyright Office, or marked with a copyright notice (©, name, date), and lasts for at least 70 years. It is important to note, however, that the Copyright Act does not protect the facts and ideas in a copyrighted work -- only the author's particular "expression" of those facts or ideas.

During the term of protection, the author (or the author's assignee) holds the exclusive right: (1) to copy the work; (2) to create derivative works; (3) to distribute the work; (4) to display, perform or broadcast the work. Before exercising any of these rights with respect to a protected work, you must obtain permission from the copyright holder unless the work is in the public domain (*e.g.*, the term of protection has lapsed; the work is a government work) or one of the statutory exceptions such as "fair use" applies.

There is no brightline rule for determining what constitutes a "fair use" under federal copyright law. Instead, the proposed use of a protected work must be evaluated in terms of four statutory factors:

- (1) the purpose and character of the use;
- (2) the nature of the work to be copied;
- (3) the amount of copying; and
- (4) the effect of the copying on the potential market for or value of the work.

No single factor is conclusive (such that copying for educational or scholarly purposes is not a "fair use" *per se*). Courts vary in their application of these factors, but the copying of a protected work is more likely to qualify as a "fair use" if:

- The copying is for a "fair use" purpose expressly identified in the Copyright Act: criticism, comment, news reporting, teaching, scholarship, or research (17 U.S.C. 107).
- The copying is for non-commercial purposes.
- The substance of work to be copied is more factual than expressive.
- Only so much of the work is copied as is necessary to accomplish the "fair use" purpose.
- The copies are limited in number and, with respect to digital copies, distributed in a manner that reduces the risk of infringing uses (*e.g.*, password protected for use by enrolled students during a limited period).
- There is not a "ready market" for the sale or licensing of the work (*e.g.*, the author or publisher is difficult to locate after a good faith search).
- The copying is not a substitute for the purchase of the entire work and would not, if widespread, have an appreciable effect on the market for the sale of the entire work.

- The author and publisher are properly identified (if known).
- The work from which the copies are to be made has itself been legally obtained.
- The work has been published such that copying will not deprive the copyright owner of the right of first publication.

Best Practices

- Works for Hire
- E-Reserves (Firestone)
- E-Licenses (Firestone)
- Blackboard (OIT)
- Audio Reserves (Mendel)
- OGC Copyright Guidelines (coming July 2005)