

**ArATE Electronic Journal**  
**Volume 3, Number 1**  
**March, 2012**

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**Teacher Education and Copyright: A Focused Guide to Fair Use and Copyright Compliance**

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## **Teacher Education and Copyright: A Focused Guide to Fair Use and Copyright Compliance**

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Emerging technologies present new challenges for teacher educators while extending the limits of copyright law. The abundant sources on the Internet and the readily available access to computers and digitizing equipment provide educators with a vast amount of potential information. Yet, in using instructional media to support a university's teacher education curriculum, instructors often are concerned about how to share articles, video, music, images, and other intellectual property effectively their candidates within acceptable copyright guidelines. It is no wonder that instructors and candidates frequently do not understand the degree of latitude allowed in using other people's works. Determining the copyrighted material they can or cannot use is often confusing. In effect, a lack of clear-cut answers may result in uncertainty, fear of liability, and even decisions not to use essential resources. This article provides teacher educators with a brief but focused overview of the major points of copyright as they apply in an educational setting. In particular, teacher educators will be able to better understand the times that different copyrighted resources can be used in a school's curriculum without requesting permission or incurring additional costs.

### What is Protected?

Copyright protects "original works of authorship" that are fixed in a \* tangible form of expression and this includes the following categories:

- 1) literary works (including computer programs)
- 2) musical works, including any accompanying words
- 3) dramatic works, including any accompanying music, pantomimes and choreographic works
- 5) pictorial, graphic, and sculptural works (including maps)
- 6) motion pictures, audiovisual works and sound recordings (in any format)
- 7) architectural works

\*Tangible form may include anything written on paper, saved to disk (web pages, graphics on web, electronic mail messages or computer programs), or saved on any audio/video device.

### What is Not Protected?

Works that have not been fixed in a tangible form of expression are not protected. This group includes titles, names, short phrases, slogans; familiar symbols or designs; listings of ingredients or contents. The category extends to ideas, procedures, methods, systems, processes, concepts, and principles as well as works consisting entirely of information that is common property (such as standard calendars, height & weight charts, tape rulers & measures, lists or tables taken from public documents).

### What is Fair Use?

Fair Use provides guidelines for the legal or legitimate use of copyrighted materials in educational settings. Specifically, Section 107 of the 1976 Federal Copyright Law states: "The fair use of a copyrighted work for purposes such as criticism, comments, news reporting,

teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” According to Fair Use, there are four factors to be considered:

- 1) The purpose and character of the use (whether such use is of a commercial nature or is for nonprofit educational purposes.
- 2) The nature of the copyrighted work (the type of work: book, article, video, audio-visual, etc.
- 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- 4) The effect of the use upon the potential market or value of the copyrighted work.

In addition to the Fair Use factors, teacher educators should consider three questions before using or copying copyrighted materials for educational purposes:

1. Will the expression or words by the author/creator be used? Will the particular way an expression or words are sequenced be used? Will the way a concept is expressed be used? If the answer is “No,” without a doubt, then the work in question may be used. If the answer is “Yes,” then the following question must be considered. Note that duplicating or photocopying someone else’s work is the same as using the author’s expression.
2. Is the expression or rendering protected by copyright? If the answer is “No,” then the work in question may be used. These works may include works in the Public Domain or works that are not protected for other reasons. If the answer is “Yes,” or even “Maybe,” then the third question must be considered.
3. Will the use of the work in question go beyond Fair Use? If the intended use of the work falls within one of the exceptions for Fair Use, then the work or resource may be used. However, note that certain limitations may still apply in this case.

If the answer to all of the above questions is “Yes,” then permission from the author/creator is needed. If the answer to any of the questions is “No,” the Fair Use provision might apply.

Based on the above Fair Use factors and the three questions, the following copyrighted materials may be used as indicated in an educational setting without requesting permission or incurring additional costs:

#### Print Materials

You may make a single copy of:

- an article from a newspaper or magazine.
- a drawing, graph, chart, cartoon, diagram or picture.
- a chapter from a book.
- a short story, essay or poem from a collection.

And you may keep the single copy in your file for use in teaching or research.

However:

- copies may not be made to create or replace a collective work or anthology; i.e. you cannot create your own book.
- no copies may be made of “consumables,” i.e., workbooks, test books and answer sheets.

- the same materials may not be copied from term to term.
- an administrator cannot require a teacher to make photocopies.

You may make multiple copies provided:

- no more than one copy per pupil is made.
- no extra copies are made.
- each copy includes a copyright notice.
- copies are used for a specific lesson, not just as extra credit.
- no charge is made to the student more than the actual cost of photocopying.
- the copies are not used from term to term without writing to obtain permission from copyright holder.

#### Spontaneity

This condition assumes that you find material to photocopy less than three weeks from when you want to use it in the classroom. Otherwise you should write for permission.

#### Brevity

Specific guidelines apply regarding the amount to be copied including

- Picture books: only two pages or no more than 10% of the whole work may be copied.
- Prose: stories or essays less than 2500 words may be copied. Otherwise no more than 1000 words or 10% of the work may be copied.
- Poetry: if less than 250 words and printed on 2 or less pages, an entire poem may be copied. For poems longer than 250 words, there is a 250-word limit on copying.

#### Cumulative Effect

Making copies should not preclude purchasing copyrighted materials or

- to create a collective work or anthology.
- to avoid purchasing workbooks.
- for repeat use in more than one class or course.

#### Copying Audio-Visual Materials

Only computer software may be copied as a single copy as a backup copy. Without a multi-user software license, single-user copies may not be installed on multiple machines, including a network. No other audio-visual materials may be copied. The only exception to this standard is that copies may be made when the original is in an “obsolete” format, such as an 8 mm film, Beta VHS tape or a 78 record.

#### Fair Use Guidelines for Audio-Visual Materials

##### Materials

- must have been purchased or legally acquired.
- must be used in the context of a face-to-face teaching activity and be directly related to the curriculum.
- must be presented by either the teacher (librarian) or students in the class.
- of presentations must occur in a classroom (this includes the library).

### Off-Air Recording

Programs may be taped from broadcast channels providing

- the copy includes all copyright information and is not altered from its original content.
- the same program is not taped multiple times.
- the tape is erased within 45 days.
- the tape is not shown more than 2 times to the same class.

### Graphics

This category includes maps, charts, cartoons, paintings, illustrations, photos, posters, etc. You may make one copy for one class or course provided that:

- there is no time to request permission.
- the original is not altered or adapted in any way (this includes enlarging the image).
- no more than one graphic is copied from any one magazine or book.

### Multimedia

To use copyrighted materials in a multimedia presentation there are special Fair Use restrictions that apply to presentations created by the teacher educator. These materials may be used only in the classroom for which they were created and with face-to-face teaching, and the opening screen must include a copyright statement. Instructor-created multimedia presentations may only be kept for two years and only two copies may be reproduced.

### Limitations

Specific limits exist for the amount of:

- Text: limits are same as copying text in print materials.
- Music: no more than 10% of the source may be copied with no more than 30 seconds of music.
- Video or Film: no more than 10% of the source may be copied with no more than 3 minutes of video or film.
- Illustrations: no more than five images from a single artist may be copied.

### Conclusion

It is important to note that this overview of copyright is a general guideline for teacher educators who use copyrighted materials and resources to support a university's teacher education curriculum. Teacher educators are encouraged to further review the 1976 Copyright Law, the Fair Use Act, and the various media guidelines applicable to the educational environment.

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