



Fair Use of Copyright Protected Material and Teachers

Fair use explicitly allows use of copyrighted materials for educational purposes such as criticism, comment, news reporting, teaching, scholarship, and research. Rather than listing exact limits of fair use, copyright law provides **four standards for determination of the fair use exemption**:

1. **Purpose of use:** Copying and using selected parts of copyrighted works for specific educational purposes qualifies as fair use, especially if the copies are made spontaneously, are used temporarily, and are not part of an anthology.
2. **Nature of the work:** For copying paragraphs from a copyrighted source, fair use easily applies. For copying a chapter, fair use may be questionable.
3. **Proportion/extent of the material used:** Duplicating excerpts that are short in relation to the entire copyrighted work or segments that do not reflect the "essence" of the work is usually considered fair use.
4. **The effect on marketability:** If there will be no reduction in sales because of copying or distribution, the fair use exemption is likely to apply. This is the most important of the four tests for fair use ([Princeton University](#)).

None of these factors alone constitutes fair use. Even though materials may be copied for educational purposes, the other standards must be met. Unfortunately, these are not exactly crisp and clear guidelines. Nevertheless, ***ignorance of the law is no excuse***. Teachers should consider the following:

- In one case, a teacher was held liable for copying 11 out of 24 pages in an instructional book when it was used in subsequent semesters without permission from the copyright holder ([Washington State University](#), 1997).
- Penalties for copyright violation or infringement are harsh. Judgments can run up to \$100,000 for each act of deliberate or willful infringement ([University of Texas](#)).
- Many school districts and institutions have policies relating to reproduction of copyright materials. Disregard for established policies that reflect copyright law could mean that a teacher charged with copyright violation would receive no legal support from the employer-district.

Questions and Restrictions for Fair Use

Before using or copying materials for educational purposes, a teacher should consider three questions:

1. **Will the expression by the author/creator be used?** Will the particular way words are sequenced or a concept is expressed be used? If the answer is without a doubt "no," then the work may be used. Keep in mind, however, that duplicating or photocopying someone else's work is the same as using the author's expression. If the answer to this question is "yes" or "maybe," the next question must be considered.
2. **Is the expression/rendering protected by copyright?** If the answer is "no," then the work may be used. For example, a work might be old enough to be part of the public domain or perhaps unprotected for another reason. If the answer is "yes" or "maybe," the third question must be considered.
3. **Will the use go beyond the fair use?** If the application falls within one of the exceptions listed for fair use, then the material or work may be used. However, certain limitations still apply.

If the answer to these all the above questions is "yes," then permission from the author is needed. If the answer to any of these questions is "no," the fair use provision might apply. Still, there are **certain restrictions**.

1. **Brevity:** Numerical limits apply stipulating what extent or percentage of the whole work may be copied. (See [chart](#) below.)
2. **Spontaneity:** The idea to use the materials may not be preconceived or preplanned. Administrators are prohibited from instigating fair use exemption for specific copyright material for classroom purposes. The times between the decision to use the material and the occasion to use it in the classroom must be so close together that a timely request for permission from the author could not be made.
3. **Cumulative Effect:** The copying must not have a negative cumulative effect on the market of the copyrighted work. The copying must be for (a) only one course in the school where copies are made, (b) not more than one short poem, article, story, essay or two parts from longer works copied from the same author; nor more than three from the same anthology or collection or periodical volume during the one class term.
4. **Copyright Notice:** Along with attribution, this must be included on all copies.
5. **No Photocopy Profit:** Students may not be charged more than the actual cost of making the copies ([Fishman](#), 1997, p. 11/13-14).

Note: Mere attribution or citation does not diminish liability in cases of copyright infringement. In addition, ownership of a book, image, software program, or other work does not automatically confer copyright ownership. The right to copy, display, or otherwise use must be specifically granted.

Fair Use Chart for Teachers (adapted from Washington State University)

Work or Materials to be used for Educational Purposes	Fair Use Restrictions for Face-to-Face Teaching	Illegal Use without Explicit Permission from Creator/Author
Chapter in a book	<p>Single copy for teacher for research, teaching, or class preparation.</p> <p>Multiple copies (one per student per class) okay if material is (a) adequately brief, (b) spontaneously copied, (c) in compliance with cumulative effect test.</p> <p>Copyright notice and attribution required.</p>	<p>Multiple copies used again and again without permission.</p> <p>Multiple copies to create anthology.</p> <p>Multiple copies to avoid purchase of textbook or consumable materials.</p>
Newspaper/magazine article	Same as above.	Same as above
Prose, short story, short essay, Web article	<p>Multiple copies of complete work of less than 2,500 words and excerpts up to 1,000 words or 10% of work, whichever is less.</p> <p>For works of 2,500-4,999 words, 500 words may be copied.</p>	Same as above
Poem	<p>Same as for first item.</p> <p>Multiple copies allowed of complete poem up to 250 words -- no more than two printed pages.</p> <p>Multiple copies of up to 250 words from longer poems.</p>	Same as above
Artwork or graphic image - chart, diagram, graph, drawing, cartoon, picture from periodical, newspaper, or book, Web page image	<p>Same as for first item.</p> <p>No more than 5 images of an artist/photographer in one program or printing and not more than 10% or 15% of images from published collective work, whichever is less.</p>	<p>Same as first item</p> <p>Incorporation or alteration into another form or as embellishment, decoration for artistic purposes for other than temporary purposes.</p>
Motion media - film and videotape productions	<p>Single copy of up to 3 minutes or 10% of the whole, whichever is less.</p> <p>Spontaneity required.</p>	Multiple copies prohibited. Incorporation or alteration into another form as embellishment for artistic purposes for other than temporary purposes prohibited.
Music -sheet music, songs, lyrics, operas, musical scores, compact disk, disk, or cassette taped recordings	Single copy of up to 10% of a musical composition in print, sound, or multimedia form.	Same as immediately above
Broadcast programs	<p>Single copy of off-air simultaneous broadcast may be used for a period not to exceed the first 45 consecutive calendar days after recording date.</p> <p>Use by only individual teachers.</p> <p>Copyright notice required.</p>	<p>Same as immediately above.</p> <p>May not be done at direction of superior.</p> <p>May not be altered.</p>

Rented or Purchased Movies May Be Played By Teachers Without a License

Section 110(1) of Title 17 of the United States Code grants a specific exemption from the copyright laws for:

“performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made”

This means that no license from the copyright holder is required when a teacher at a public school or non-profit educational institution uses a lawfully purchased or rented copy of a movie in classroom instruction. It doesn't matter who purchased or rented the film, so long as it was legally obtained. The exemption is granted for "face-to-face" teaching activities only. This means that the teacher (or a substitute teacher) must be present. The exemption covers a "classroom or similar place devoted to instruction". This gives teachers some flexibility. For example, it is likely that a gymnasium used for large educational presentations in which several classes are convened together would be covered so long as a teacher presented the film. Note that remotely accessing a film from a central memory storage facility is probably not permitted. See 17 U.S.C. § 1201(a).

It is illegal to circumvent technological measures that effectively control access to copyrighted works, such as digital locks, to make compilations of scenes from various movies. Title 17 U.S. Code § 1201(a)(1)(A). However renting or purchasing a movie and showing a small portion of it and then taking it out of the DVD or VHS player and putting in another does not involve circumventing any type of lock.

Snippets: Fair Use in Any Context

Snippets of movies can be shown in the classrooms of public schools and non-profit educational institutions without a license pursuant to Section 110(1) of Title 17 quoted above. In other contexts, short snippets of films may be used under the Fair Use Doctrine. Section 107 of Title 17 contains a list of the various purposes for which the reproduction of a particular work may be considered "fair use" and, as such, does not require a license. "Fair Use" is limited to relatively small portions of copyrighted materials used for criticism, comment, news reporting, teaching, scholarship, and research. The statute sets out four factors to be considered in determining whether or not a particular use is fair:

1. the purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The distinction between "fair use" (which is permitted) and infringement (which is not permitted) is unclear and is not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission. Adapted from: [Article on Fair Use](#) by the U.S. Copyright Office. Fair use does not entitle a person to break any electronic locks.

Snippets: Breaking Electronic Locks

Most copies of movies (DVDs, electronic copies, etc.) have digital locks that prevent the use of snippets and, except in a few specific circumstances, it is illegal to circumvent those locks. 17 U.S.C. 1201(a)(1)(A). The only exception relating to the classroom is for the film or media studies department of a university. In Title 17 of the U.S. Code of Federal Regulations, Section 201.40 the Librarian of Congress determined that "during the period from November 27, 2006 through October 27, 2009, the prohibition against circumvention of technological measures that effectively control access to copyrighted works set forth in 17 U.S.C. 1201(a)(1)(A) shall not apply to persons who engage in noninfringing uses of . . .

(1) Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors." There is an exception in 17 U.S.C. 201(d) which provides that "A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title [17 U.S.C.A. S 1 et seq.]." This would include the educational use permitted by Section 110(1) or fair use. However, the exception only applies to making a determination of "whether to acquire a copy" of the work, not to the use of the work.

Authorities: 17 United States Code, Sections 110(1) and 1201; [Public Performance Rights for Movies and the Face to Face Teaching Exemption](#) from the College of St. Benedict, St. John's University; "Use of Video Cassettes in the Classroom," by Ralph D. Mawdsley; 32 Education Law Reporter 1163; West Publishing Company, 1986; and "Copyrights, Cassettes and Classrooms: The Performance Puzzle," by Francis M. Nevins, 43 Journal of the Copyright Society of the U.S.A. 1 (1995).

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