

Copyright 101 for Educators: Winter 2003

(Published in the TechEdge, Spring 2003)

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"Do I have to get permission to use this?" "Is this legal?" "If it doesn't have the copyright symbol on it, is it still copyrighted?" These are important questions, but unfortunately there are often not clear answers to them. Misconceptions abound among educators today about what uses of multimedia are permissible and legal in the classroom under US copyright law, and it is critical to address and correct these ideas. The advent of mp3 file compression has heralded a new day for music piracy, and online services like Napster have morphed into "peer to peer" (P2P) file sharing clients apparently out of legislative reach, like Morpheous, Kazaa, Limewire, and many others. The issues are real, and the need for educator guidelines is clear. Not only do educators have a responsibility and legislative mandate to model ethical, legal, and appropriate respect for US copyright law in their own teaching, but they must also educate the next generation about the importance and requirements of intellectual property law. Given the dynamic nature of not only technology, but copyright law itself, this is a formidable challenge.

Any discussion about copyright law will likely begin with a disclaimer, and this article is no exception. I am NOT a lawyer, I am an educator, and individuals needing specific legal advice about copyright adherence should consult an attorney. Practically speaking, however, I recognize the need for updated guidelines on the use of multimedia materials in educational contexts. As of this writing, in the winter of 2003, this article includes updated guidelines for US educators on copyright law and guidelines for classroom instruction. These guidelines may (and likely will) be eclipsed by further court hearings and US laws, so the most up to date information should always be sought. An excellent place to start is the US Copyright Office, online at www.copyright.gov.

How Can All This Be Simplified?

Compliance with copyright law does not have to be complicated, but the conservative requirements this simplistic approach requires are not likely to be desirable or realistic for the modern classroom. The most conservative guidelines for following copyright law are:

1. Create all graphic and textual content from scratch: if it is original, no copyright issues should be encountered. This means teachers as well as students would not copy and paste ANYTHING from the Internet or from other electronic sources: no text, no images, no audio files, no video files, no animations, or anything else.
2. If using a portion of someone else's work (in any format), obtain permission from the actual creator / copyright holder(s) first. If permission cannot be secured in writing, do not use the material. The problem with this idea is that in our electronic global village, it is often difficult to ascertain who the actual author or copyright holder of a specific electronic file or excerpt is. Websites abound claiming to offer "free images and clip art," but frequently these include content copied without permission from other sources. If material is commercially published in print or other non-internet media (videotapes or CD-ROMs, for example), the publisher can be identified and contacted. It may be difficult to obtain publisher permission to use material, however, and the process can be time consuming.

Do educators have to follow such conservative, stringent guidelines in order to remain in compliance with US copyright law? No! But if not, the answer to the question "is this legal?" becomes more complex. The only way to obtain a definitive answer about the legality of perceived "fair use" today is to hear the verdict of a judge in the courtroom: everyone else's ideas about fair use truly are just opinions. Guidelines are available, however, which can be used by educators to make decisions about acceptable and unacceptable uses of multimedia in the classroom. These guidelines MUST be updated beyond the archaic 1996 "Guidelines for Educational Use of Multimedia" (discussed later in this article), to include more recent legal provisions of US law.

A Brief History of US Copyright Law

According to the US Copyright Office, "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 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- To reproduce the work in copies or phonorecords;
- To prepare derivative works based upon the work;
- To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- 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; and
- In the case of sound recordings, to perform the work publicly by means of a digital audio transmission."[\[1\]](#)

US copyright law was not created to make individuals or companies rich: it was conceived by the framers of the United States Constitution as a way to promote and protect innovation for a short, fixed amount of time. In fact, the original copyright clause in the US Constitution only addresses author's rights to print and publish: it did not speak to the concepts of "derivative rights" or "display rights," which are now contentious in our era of media moguls and internet communication.

The recent case *Eldred v. Ashcroft*, heard by the US Supreme Court in October of 2002, exemplifies the ways copyright law has been stretched and changed since its inception in the late 1700s. In the case, plaintiffs are attempting to overturn the 1998 Sonny Bono Copyright Term Extension Act, which extended the term of copyrights by 20 years (to its present

term: life of the author plus 70 years.) The stakes are high. Many big-media corporations want longer statutory limits on copyrights, to protect financial interests in derivative works from copyrights already held and soon to expire. The principle at stake is critical: should corporations be allowed to own and control copyrights for a virtually unlimited number of years, or should ownership expire and these works pass into the public domain?[\[2\]](#) These issues being debated in courtrooms today are relevant to educators, because they directly impact what is considered "fair use" and what is considered illegal for teachers as well as students.

In 1996, 20 years after the Copyright Act of 1976, the Consortium of College and University Media Centers (CCUMC) crafted a document entitled "The Fair Use Guidelines for Educational Multimedia."[\[3\]](#) This document, which has (justifiably) been taken offline on many websites, is the foundation for many educators' understandings of copyright law, but is erroneous several ways in light of more recent federal copyright legislation.

The Fair Use Guidelines for Educational Multimedia provided the following guidelines which are now misleading or wholly incorrect.

1. Academic citation of sources / documentation is not related to "fair use" under present US copyright law

The 1996 Fair Use Guidelines by the CCUMC directed educators to properly cite electronic resources, including Internet websites, in papers and projects prepared for educational use. This suggestion is a good one, but it is misleading to associate academic documentation with copyright and "fair use." The guidelines for determining fair use (discussed later in this article) do not include the question, "Is the educator or student properly documenting electronic sources in a comprehensive bibliography?" Academic documentation is something we do as educators and students, because it is the right thing to do, but it is not related to a legal finding of "fair use" in current US copyright law.

2. "Bright line" guidelines for multimedia fair use (portion limitations listed in the 1996 document) do not exist.

The Digital Millennium Copyright Act (DMCA) did away with "bright line" rules for determining what portion of a textual document, audio file, movie clip, or other multimedia file can be legitimately used for an educational purpose. The Act also did away with the separate category of academic fair use: determinations of copyright infringement are considered under a set of guidelines for general fair use, applicable to educational as well as non-educational contexts. The time limitations included in the 1996 guidelines are also no longer applicable. The CCUMCÕs attempt to make clear copyright guidelines for educators should NOT be used to determine "fair use" in educational contexts today. Other guidelines are available and should be used instead.[\[4\]](#)

Guidelines for Teachers and Students

Section 107 of the 1976 Copyright Act establishes limitations on the exclusive rights of copyright holders, termed "Fair Use." These factors to be considered when determining fair use are:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the 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.[\[5\]](#)

Although originally crafted in 1976 before the advent of the Internet, digital copy and paste and mp3 file sharing, this section of the Copyright Act is still used by intellectual property lawyers and judges to reach findings of "fair use" today. Educators should utilize these guidelines instead of the 1996 CCUMC guidelines to determine whether or not a specific use of multimedia in the classroom is legal or not. This means rather than referring to the 1996 documentÕs "portion limitations," each use of multimedia in an educational context should be weighed on its own merits using these factors.

The third factor, which concerns the portion used, should NOT be construed to mean that in every case, an entire work cannot be legally utilized as "fair use." Generally, the more of a work that is used, the less it weighs in favor of fair use, but courts have ruled in some cases that entire works can be used fairly. In most contexts, the fourth factor (effect of use) becomes important, and the way in which the used work is shared with others is also critical.

For example, if a song or video recording is shared within a face to face class meeting, that use of multimedia is legally treated much differently than the posting of the same media file on a publicly accessible internet website. The "potential effect on the market" of such an action is quite different. If access to the website is limited, by a required login password for example, posting online may be "fair use" as long as the audience is limited. Fortunately, some of these instances have been further clarified by the new TEACH Act passed by Congress and signed into law in late 2002. These clarifications apply primarily to distance education instruction.

For classroom teachers, wondering what to tell students about the use of internet graphics and other multimedia files in their reports or presentations, the above 4 factors should be used to determine "fair use." Examples of multimedia use NOT likely to be considered "fair" would be:

1. Using a song downloaded with P2P file sharing software OR "ripped" into another format (like mp3) from a CD the student owned in a PowerPoint presentation, and then posting that presentation (including the used audio file) on a publicly accessible internet website.
2. Using a trademarked logo (like a Disney cartoon character) in a published student project, which is subsequently posted online.
3. Creating an online gallery of photos or scanned images, including ones for which permission for redistribution / online sharing has not been obtained in writing by the original author(s) or copyright holder(s).
4. Creating a school logo or other customized image using a trademarked logo, and then selling t-shirts with the logo transferred onto them as a fundraiser.

The way these materials are used and shared with others is essential to whether or not their use constitutes "fair use." Examples of multimedia use LIKELY to be considered "fair" would be:

1. Utilizing graphics copied from internet websites in a PowerPoint presentation shared with a limited audience, either strictly face to face or online in a password protected website.
2. Using sound clips or entire songs in a multimedia presentation, shared under the same restrictions as #1 above.

New Laws Affecting Copyright: DMCA and The TEACH Act

According to the US Copyright Office's Executive Summary of the act, "The Digital Millennium Copyright Act of 1998 (DMCA) was the foundation of an effort by Congress to implement United States treaty obligations and to move the nation's copyright law into the digital age." [6] The referenced treaty obligations were passed the World Intellectual Property Organization (WIPO) and signed by the US in the 1990s. Despite these apparent worthwhile goals, the DMCA has spawned harsh criticism from groups like the Anti-DMCA (www.anti-dmca.org.) These opponents claim the act is "being used to silence researchers, computer scientists, and critics," and that "Corporations are using it against the public." [7] The DMCA, in their view, pits the rights of individuals and educational institutions against the rights and wishes of powerful corporations. DMCA provisions make it "a crime to circumvent copyright protection systems." [8] Among many things, this means it is illegal for anyone (including students) to attempt to get around a copyright protection system, like those used on commercial DVDs. The Harvard Law School has an open forum website, titled "OpenDVD," to disseminate information on these issues and invite public input (<http://eol.law.harvard.edu/openlaw/DVD/>.) Another organization promoting public awareness and advocacy in areas where law, technology, and "free speech" are in conflict is the Electronic Frontier Foundation (www.eff.org).

The Teach Act (Technology, Education, and Copyright Harmonization Act) was signed into law by President George Bush on November 2, 2002, It provides specific educational use copyright exemptions, largely applicable to distance education contexts. It also limits the liability of educational institutions for instances of copyright infringement by academic

instructors under certain circumstances. It imposes requirements on educational organizations, however, which must be followed for these authorized uses and liability limitations to be in effect.[\[9\]](#)

An excellent summary and analysis of the TEACH Act, offered by the American Library Association, is online at www.ala.org/ala/aboutala/offices/wo/woissues/copyrightb/federallegislation/distanceed/teachfaq.cfm. It provides a comprehensive explanation of the new law's provisions for non-profit, accredited educational institutions and the specific requirements imposed on these organizations to realize the benefits of the new law in distance education courses. Permission to utilize copyrighted materials within distance instruction without the permission of copyright holders or previously required payment of royalties are the primary benefits of the TEACH Act, but specific duties must be carried out by different entities within educational organizations. Organizational policymakers, information technology officials, and individual instructors have specific responsibilities outlined in the TEACH Act, which must be studied and followed as prescribed in the law.

Copyright Responsibilities of Educators

Teachers at all levels have the responsibility and the legal obligation (within Texas and many other states) to model appropriate respect for copyright law and educate students about how they can do the same. Provisions of the Technology Applications TEKS for Grades 3-5 (§126.3.B. 3.b) require that students "model respect of intellectual property by not illegally copying software or another individual's electronic work." As previously mentioned, proper academic documentation of sources should be modeled and taught, but is not considered as a factor in a legal finding of "fair use." The requirement to model and teach proper citation methods is further outlined in the Technology Applications TEKS for Grades 6-8 (§126.12.C.3.a), requiring that students "discuss copyright laws/issues and model ethical acquisition and use of digital information, citing sources using established methods." For citation guidelines, refer to "Citation Style for Research Papers" offered by Long Island University (www.liunet.edu/cwis/cwp/library/workshop/citation.htm.)

It might be nice if copyright law was less confusing, but if it was, how would so many lawyers be making such a good living? Irrespective of such utopian ideas, copyright law and its complexities are a reality, and educators have a responsibility to not only stay informed but insure their professional practice reflects this awareness as well as the instruction they provide to students.

For further reading on this subject, refer to "Copyright and Fair Use in the Classroom, on the Internet, and the World Wide Web" by the Library and Information Services division of the University of Maryland University College (www.umuc.edu/library/copy.html.)

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Additional Links Added 3/17/2009

- [Copyright for Educators Slidecast on SlideShare](#) (Presented February 2009)
- [Copyright for Educators wiki curriculum](#)

[1] "Copyright Basics: Circular 1." US Copyright Office. <http://www.copyright.gov/circs/circ1.html#wci>. Accessed 3 Dec 2002.

[2] Levy, Steven. "Lawrence Lessig's Supreme Showdown" Wired Magazine. Oct 2002. <http://www.wired.com/wired/archive/10.10/lessig.html>.

[3] Reinhardt, Phil. "Copyright and Citations: What Educators Need to Know. <http://homepage.mac.com/prr/copyright.html>. 20 Nov 1997.

[4] Guidelines provided Wes Cochran, a lawyer specializing in intellectual property law. Presentation hosted by the Teaching, Learning, and Technology Center of Texas Tech University. April 10, 2002.

[5] "Copyright Law Chapter 1." US Copyright Office. <http://www.copyright.gov/title17/92chap1.html#107>. Accessed 3 Dec 2002.

[6] "Executive Summary, Digital Millennium Copyright Act. Section 104 Report." US Copyright Office. http://www.loc.gov/copyright/reports/studies/dmca/dmca_executive.html. Accessed 3 Dec 2002.

[7] Anti-DMCA website. <http://www.anti-dmca.org/>. Accessed 3 Dec 2002.

[8] FAQ on DMCA. Anti-DMCA. http://anti-dmca.org/faq_local.html. Accessed 3 Dec 2002.

[9] "Public Law 107-273." US Copyright Office. <http://www.copyright.gov/legislation/pl107-273.html#13301>. Accessed 3 Dec 2002.

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