

Fair Use of Copyrighted Materials

- ◆ What is “fair use?”
 - Fair use is a term used which describes how a copyrighted item can be used without legal violation.
 - The problem with this term is that it effectively fails to provide clear guidance with regard to what can or cannot be copied.
 - Legal scholars are perplexed as well by this term.

Fair Use of Copyrighted Materials

- ◆ Fair use, by statute (17 U.S.C.A. §107), involves a balancing process by which a complex of variables determine whether other interests should override the rights of the creators.

Fair Use of Copyrighted Materials

- ◆ What are the copyright owner's exclusive rights?
 - Make a copy (reproduce)
 - Use a work as the basis for a new work
 - Electronically distribute or publish copies
 - Publicly perform music, prose, poetry, a drama, or play a video or audio tape or a CD-ROM
 - Publicly display an image on a computer screen or otherwise.

Fair Use of Copyrighted Materials

- ◆ What are these four “interests” that allow the override of creator rights?
- ◆ (1) The purpose and character of the use, including its commercial nature;
- ◆ (2) The nature of the copyrighted work;
- ◆ (3) The proportion that was taken; and
- ◆ (4) The economic impact of the “taking.”
- ◆ These interests have ambiguous boundaries, cannot be measured with any precision, and overlap with one another.

Fair Use of Copyrighted Materials

- ◆ What is the character of the use?
 - Fair use:
 - Nonprofit
 - Educational
 - Personal
 - Not fair use:
 - Commercial
 - Gray Area: Parody (Woody Guthrie—This land...)

Fair Use of Copyrighted Materials

- ◆ What is the nature of the work to be used?
 - Fair use:
 - Fact
 - Published
 - Not fair use:
 - Imaginative
 - Unpublished

Fair Use of Copyrighted Materials

- ◆ How much of the work will you use?
 - Fair use:
 - Small amount (nonprofit educational institution may copy an entire article from a journal for students in a class and it be considered fair use)
 - Not fair use:
 - More than a small amount (A commercial copyshop would need permission for the same copying mentioned above)

Fair Use of Copyrighted Materials

- ◆ Consider the economic impact of the “taking.”
 - Fair use:
 - Consider the first three and if the scale is tipping the direction of “fair use” then probably OK.
 - Not fair use:
 - Competes with the original, avoids payment for permission in an established permissions market.

Fair Use of Copyrighted Materials

- ◆ Individual liability for infringement:
 - Individuals are liable for their own actions.
 - Copyright owners have sued and probably will continue to sue individuals.
 - Penalties are very harsh: \$150,000 for each separate act of willful infringement (which means you knew you were infringing and you did it anyway).
 - Ignorance of the law is no excuse.

Fair Use of Copyrighted Materials

- ◆ There is a defense to such an action:
 - The good faith fair use defense (which applies if the person who copied the material **reasonably** believed that what he or she did was a fair use).
 - If you follow a university policy regarding “fair use” then you are probably protected under the doctrine and will be represented by university legal counsel.

Fair Use of Copyrighted Materials

- ◆ So, bottom line, when do you need to get permission to use a copyrighted work?
 - Is the work protected?
 - Anyone can freely use:
 - ◆ Works that lack originality (phone book)
 - ◆ Works in the public domain
 - ◆ Freeware
 - ◆ US government works
 - ◆ Facts
 - ◆ Ideas, processes, methods & systems described in copyrighted works.

Fair Use of Copyrighted Materials

- ◆ What are “public domain” works?
 - Any work published before December 31, 1922.
 - Works published between January 1, 1923 and December 31, 1978, inclusive, are protected for a term of 95 years from the date of publication, with the proper notice.
 - If the copyright was not renewed as required during this period, the original term of 28 years has expired and these items are in the public domain.

Fair Use of Copyrighted Materials

- ◆ What are “public domain” works?
 - After 1978, the way we measure the term of protection changes. It is no longer related to a date of publication, but rather runs for 70 years from the date the author dies (called, “life of author” plus 70 years). Publication is irrelevant. Works are protected whether they are published or not!
 - Works created before 12/31/1978, but never published, are now protected for the longer of the life of the author plus 70 years or until 12/31/2002.

Fair Use of Copyrighted Materials

- ◆ Key: If an exemption does not excuse infringement and eliminate the need to ask permission or pay fees to exercise the owner's rights, **you need permission!**
- ◆ Exemption might include:
 - Fair use
 - Library's special rights
 - Educational performances and displays

Fair Use of Copyrighted Materials

◆ General Fair Use Rules:

■ Classroom guidelines:

- Coursepacks: Limit materials to:
 - ◆ Single chapters
 - ◆ Single articles
 - ◆ Several charts, graphs or illustrations
 - ◆ Other similarly small parts of a work.
- Include any copyright notice on the original and appropriate citations and attributions to the source.
- Obtain permission for materials that will be used repeatedly by the same instructor for the same class.

Fair Use of Copyrighted Materials

- ◆ Distance learning is also a complex issue.
 - Key is small parts, limited times and limited access for it to be considered fair use.
- ◆ How about digitizing and using images for educational purposes?
 - In general, students can download and use for personal study without obtaining permission.
 - Faculty, however, may need to purchase, limit “thumbnail” images access to students enrolled and terminate access at the end of the class.

Fair Use of Copyrighted Materials

- ◆ How about musical scores?
 - Limit copying as follows:
 - Sheet music, entire works: only for performances and only in emergencies
 - Sheet music, performable units (movements, sections, etc.): only if out of print
 - Student performances: record only for teacher or instrumental evaluation or student's portfolio
 - Sound recordings: one copy for sound room or reserve room use.

Fair Use of Copyrighted Materials

- ◆ How about research copies?
 - Limit research to:
 - Single chapters
 - Single articles from a journal issue
 - Several charts, graphs, illustrations
 - Other similarly small parts of a work