

Copyright Law and Fair Use

Overview

"Fair Use" is a doctrine pertaining to U.S. copyright law that allows for limited use of copyrighted materials without receiving explicit permission from the holder of the copyright. It is very important that all faculty and students remain aware of the limits of copyright law, and make every effort not to infringe upon copyrights held by a party other than themselves. We often make use of the work of others in an effort to educate and complete academic assignments. This is, of course, a widely accepted practice. We do, however, need to make sure we do not reproduce so much of a work that we end up violating copyrights.

Fair Use is sometimes referred to as the "10% Rule." That is to say, conventional wisdom holds that using up to 10% of a work does not violate copyrights. This does, however, often become an imprecise guideline.

In an effort to provide our faculty and students with some guidance about copyright law in general, and Fair Use in particular, the resources included in this document may prove helpful to you as participate in teaching and learning at Charter Oak State College.

How to Determine if Media Can be Used in a Course or an Assignment

When considering whether to use media, or how to use it, it is important to consider whether the usage would violate copyright law. **(Note: When selecting media, it is also important to ensure content is ADA accessible.)**

1. Linking Out (Including a website URL)

Ask first: Is access restricted?

If the owner has chosen to restrict access, usually through a password and/or fee, that demonstrates an intent to keep the media private. Regardless of how you obtain access, one should ask the owner for permission before sharing the content with others (in any form).

If the webpage or other content is publically accessible using an Internet connection and a URL, and the website is safe to access, you can provide the URL link to allow users to navigate to the webpage. The advantage here is that linking out preserves the owner's control of their content. They decide what is visible, how it is presented, and when/if it is accessible. The downside is the owner may choose to remove the content. This is one of the reasons why it is important to review courses regularly, to determine if any updates are needed.

2. Converting/Duplicating & Embedding Content

Ask first: Does the content include guidelines for copyright, sharing, and usage?

Many websites and media include a formal "terms and services" statement, outlining their policy for the media presented. The most well-known is probably the FBI warning at the beginning of most copyrighted video content.

Copyright Law and Fair Use

Any time you create a new instance of the content, you are either converting and/or duplicating. This includes:

- Saving a webpage or file to your computer.
- Copying and pasting content from a webpage to a local file, i.e. a Word Document.
- Editing/modifying the content
- Saving the content as a new file format
- Uploading/posting the content/file(s)

Please keep in mind:

- The absence of a statement does not grant any form of permission.
- If someone chooses to make something and does not provide guidelines, it is generally safe to use, so long as usage qualifies as “fair use” (more info on fair use below).
- If the owner does offer guidelines, either as part of the media or by contacting you, it is important to respect their wishes.
- Always look for a copyright statement or terms & services statement, and follow whatever guidelines are provided by the owner when using their content (if you choose to use it).

3. What is Fair Use?

Fair use is a situation where someone is exempt from copyright due to extenuating circumstances.

Ask first:

- Does the source/owner prohibit duplication and/or distribution in their terms and services/policy statement? If the answer is yes, do not proceed.
- What is the current status of the content? If it is unpublished or recently published, owners are less likely to tolerate any form of duplication or distribution.
- How much of the content is being duplicated & distributed? (Specifics below in 4. How much can you use?)
- To what extent does this represent a significant financial loss for the owner? Are they currently selling the content? If the answer is yes, do not proceed.
- Was the content made publicly available for free? If yes, then the question of fair use is less likely to be an issue, though the owner may still contact you.

4. Fair Use-How much can you use?

- In general, in regards to text, the following are usually acceptable:
- A single chapter from a book
- An excerpt that represents 2 pages or less, or 10% of the work (or less).
- A poem totaling 250 words or less.
- An article, essay, or short story of 2,500 words or less.

Copyright Law and Fair Use

- A single graph, chart, diagram, or image from a magazine or newspaper.

5. What are Fair Use Violations?

Any of the following can represent a fair use violation:

- Duplicating and distributing content means audiences do not have to pay the owner.
- Continuing to distribute the same content for years.
- Charging a fee for the duplication and/or distribution of copies.

Note: There are no official specifications for what will violate fair use, but the above are some common examples of what has been cited as the reason for specific violations.

6. What are Best Practices?

- Do not duplicate/distribute anything that is currently being sold or using restricted access.
- Avoid using special software to duplicate content.
- Keep portions small (unless the content itself is small in length/size).

Sources

- 107 Limitations on exclusive rights: Fair Use (<https://www.copyright.gov/title17/92chap1.html#107>)
- More Information on Fair Use (<https://www.copyright.gov/fair-use/more-info.html>)

Tools to Determine Copyright Requirements

- Exceptions for Instructors in U.S. Copyright Law (<https://librarycopyright.net/resources/exemptions/index.php#>) - This is an interactive slide show that helps you to assess if your intended use falls under copyright exceptions or not.

Fair Use

To see U.S. Copyright Law in its entirety, read Circular 92. Section 107 of Title 17 of the United States Code covers Fair Use. Section 17 states:

§ 107 · Limitations on exclusive rights: Fair Use

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phono records or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Copyright Law and Fair Use

In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Of course, wading through all the legalese to try to understand copyright law and Fair Use can prove daunting. Fortunately, a number of institutions have produced and distributed various versions of Fair Use checklists. These checklists can help you understand Fair Use better, and may help you to remain safely within the limits of Fair Use. Two of the best checklists are provided below:

- Indiana University's Fair Use Checklist:
(https://citl.indiana.edu/files/pdf/fair_use_checklist.pdf)
- Columbia University's Fair Use Checklist:
(<https://copyright.columbia.edu/content/dam/copyright/Precedent%20Docs/fairusechecklist.pdf>)

United State Copyright Law

Title 17 of the United States Code covers Copyright Law of the United States. The U.S. Copyright Office offers a document, known as Circular 92 (see <http://www.copyright.gov/title17/>), which provides the complete version of U.S. Copyright Law as of October 2009. While this is a long and dense legal document, some users may find having the complete version of Title 17 useful.

The United States Copyright Office's home page at <http://www.copyright.gov/>.

The Copyright Office's Title 17 page at <http://www.copyright.gov/title17/>.