

# Fair Use

## For Library Digital Resources

### Introduction

Welcome! This guide provides information and resources on copyright law and Fair Use and how it is related to academic activities such as research, teaching, and Library lending.

Below is a basic introduction about Copyright Law and Fair Use- Other parts of this guide provide further information on: understanding and applying fair use, using fair use check list to overcome copyright and how it will affect the teaching.

Copyright refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.

So how library can lend books to users if this law is applicable in libraries. Here law itself provide some exceptions for education institutions and libraries to provide better service to its users. Fair Use is one the law which will help the educators and librarians to overcome the issues of copyright.

### Understanding Fair Use

Fair use is an exception to the rights of the copyright owners, allowing the public to make limited uses of a protected work for the purpose such as research, education, library use etc.

Still fair use does not allow everything it also has some limitations and exceptions. So before using a copyrighted work on teaching and research you need to check the four factors to consider when determining whether your use is a fair one. They are,

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

## How to Use This Tool

- The purpose

### Favoring Fair Use

- ✓ Teaching (including multiple copies for Classroom use)
- ✓ Research
- ✓ Scholarship
- ✓ Nonprofit educational institution
- ✓ Criticism
- ✓ Comment
- ✓ Transformative or productive use (changes the work for new utility)
- ✓ Restricted access (to students or other appropriate group)

### Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

- The nature of the copyrighted

### Favoring Fair Use

- ✓ Published work
- ✓ Factual or nonfiction based
- ✓ Important to favored educational objectives

### Opposing Fair Use

- Unpublished work
- Highly creative work  
(art, music, novels, films, plays)
- Fiction

- The amount

### Favoring Fair Use

- ✓ Small quantity
- ✓ Portion used is peripheral or not significant to the entire work

### Opposing Fair Use

- Large portion or whole work used
- Portion used is "heart of the work"

- The effect

### Favoring Fair Use

- ✓ User owns lawful copy of the work  
(bought or otherwise legitimately acquired)
- ✓ One-time use
- ✓ No impact on market for original
- ✓ No product marketed by copyright holder similar to your use

### Opposing Fair Use

- Use directly substitutes for a sale that would otherwise have been made
- Repeated or long-term
- Impairs market for original work
- Easily-obtained and affordable license or permission



## Best practices in fair use for Academic Libraries

### 1. Supporting teaching and learning through library access using digital technologies.

It is fair use to make appropriately tailored course-related content available to enrolled students via digital networks.

#### LIMITATIONS

- The use of library material should be subject to closer scrutiny primarily for use in courses such as the one at issue (e.g., a textbook, workbook, or anthology designed for the course). Use of more than a brief excerpt from such works on digital networks is unlikely to be transformative and therefore unlikely to be a fair use.
- The availability of materials should be coextensive with the duration of the course or other time-limited use (e.g., a research project) for which they have been made available at an instructor's direction.
- Only eligible students and other qualified persons (e.g., professors' graduate assistants) should have access to materials.
- Libraries should provide instructors with useful information about the nature and the scope of fair use, in order to help them make informed requests.
- When appropriate, the number of students with simultaneous access to online materials may be limited.
- Students should also be given information about their rights and responsibilities regarding their own use of course materials.

### 2. Digitizing to preserve at risk items

It is fair use to make digital copies of collection items that are likely to deteriorate, or that exist only in difficult-to-access formats, for purposes of preservation, and to make those copies available as surrogates for fragile or otherwise inaccessible materials.

#### LIMITATIONS

- Preservation copies should not be made when a fully equivalent digital copy is commercially available at a reasonable cost.

- Libraries should not provide access to or circulate original and preservation copies simultaneously.
- Off-premises access to preservation copies circulated as substitutes for original copies should be limited to authenticated members of a library's patron community, e.g., students, faculty, staff, affiliated scholars, and other accredited users.

### 3. Creating digital collection of archival and special collections materials

It is fair use to create digital versions of a library's special collections and archives and to make these versions electronically accessible in appropriate contexts.

#### LIMITATIONS

- Providing access to published works that are available in unused copies on the commercial market at reasonable prices should be undertaken only with careful consideration. To the extent that the copy of such a work in a particular collection is unique (e.g., contains marginalia or other unique markings or characteristics), access to unique aspects of the copy will be supportable under fair use. The presence of non-unique copies in a special collection can be indicated by descriptive entries without implicating copyright.
- Where digitized special collections are posted online, reasonable steps should be taken to limit access to material likely to contain damaging or sensitive private information

### 4. Reproducing materials for use by disabled students, faculty, staff and other appropriate users.

When fully accessible copies are not readily available from commercial sources, it is fair use for a library to (1) reproduce materials in its collection in accessible formats for the disabled upon request, and (2) retain those reproductions for use in meeting subsequent requests from qualified patrons

#### LIMITATIONS

- Libraries should provide patrons with information about their own rights and responsibilities regarding works provided to them in this way.
- When appropriate (taking into consideration the needs of the disabled patron), the requester's use of the materials should be time-limited

## 5. Creating databases to facilitate non-consumptive research uses( Including search)

It is fair use for libraries to develop and facilitate the development of digital databases of collection items to enable non consumptive analysis across the collection for both scholarly and reference purposes.

### LIMITATIONS

- Items in copyright digitized for non-consumptive uses should not be employed in other ways (e.g., to provide digital access for ordinary reading) without independent justification, either by a license from the rights holder or pursuant to a statutory exception. Search access to database materials should be limited to portions appropriate to the non-consumptive research purpose

## 6. Collecting material posted on the World Wide Web and making available

It is fair use to create topically based collections of websites and other material from the Internet and to make them available for scholarly use.

### LIMITATIONS

- Captured material should be represented as it was captured, with appropriate information on mode of harvesting and date.
- To the extent reasonably possible, the legal proprietors of the sites in question should be identified according to the prevailing conventions of attribution.
- Libraries should provide copyright owners with a simple tool for registering objections to making items from such a collection available online, and respond to such objections promptly

## The First Sale Doctrine and eBooks

The “first sale” doctrine gives the owners of copyrighted works the rights to sell, lend, or share their copies without having to obtain permission or pay fees. The copy becomes like any piece of physical property; you've purchased it, you own it. This is how libraries across the world are able to purchase dozens of copies of a title to fulfill the requests for hundreds of readers without triggering lawsuits.

But unfortunately for the case of eBooks first sale doctrine does not apply. When we pay money in order to access an eBook, that consumer is not buying that eBook. That transaction is more accurately described as paying for a license to access the book and the publisher use DRM (Digital Right Management) tool to protect their work. DRM is designed to protect copyright holders from infringement and piracy.

### Conclusion

Fair use allows limited use of copyrighted material without permission for purposes such as criticism, parody, news reporting, research and scholarship, and teaching. However, just because a use is educational does not mean that it automatically qualifies as fair use. Copyright law sets forth four factors, all of which must be considered when determining whether a use falls under fair use.

Key Point for Four Factor Check

1. Purpose: Nonprofit educational use can support fair use. A transformative use can also will consider as a fair use
2. Nature: Use of factual or nonfiction works likely to be within fair use.
3. Amount: The less the amount of a work used, the more likely to be fair use.
4. Effect: Uses that does not complete with the market for the copyrighted work are more likely fair use.

In some cases we can use an amount up to 10% or 1,000 words, whichever is fewer, of a books but still need to check the four factor analysis because law says that if this 10% is the "heart of the work" then the approval from the copyright owner is required.

