



Copyright 101

Intellectual property, which includes copyright, is an important legal concept for educators and other education professionals to understand. Intellectual property laws are designed to encourage the creation of original works, to stimulate creativity in society in general, and to protect and promote the creation and use of products of the human mind. When a teacher uses one of these products, for example, by copying and distributing an excerpt from a novel to his or her students, or when an administrator creates a policy manual, the concept of intellectual property comes into play. To lay the groundwork for understanding, this article introduces the basic concepts of copyright law.

(Editor's note: Subsequent copyright articles in this issue of *L&L* expand on concepts defined here and connect them more specifically to the school setting.

See articles beginning on pages 14 and 24 as well as the Copyright Resources on page 22 for more information.)

By *Kate A. Thompson*

Subject: Intellectual property, copyright, fair use, public domain

Grades: K–12 (Ages 5–18)

Standards: *NETS•S 2; NETS•TVI; NETS•A VI* (<http://www.iste.org/nets/>)

Editor's note: This article is intended as a general introduction to copyright concepts and *not* as specific legal advice.

Copyright Defined

Copyright is a form of protection provided by U.S. law to the creators of original works of authorship. Copyright laws and intellectual property laws in general are based on two basic beliefs:

1. Anyone who creates an original, tangible work deserves to be compensated for that work.
2. That person should be able to control how that work is used.

Copyright protects original works including literary, dramatic, musical, and artistic works such as novels, poetry, songs, motion pictures, computer software, and architectural works. In essence, copyright protection goes into effect as soon as an original work is fixed in a tangible form of expression. The copyright in the work immediately becomes the property of the author.

U.S. copyright law (specifically, Title 17 of the United States Code, Public Law 94-553, 90 Stat. 2541) generally allows the owner of the copyright *five exclusive rights* to do and to authorize others to do the following with the copyrighted work, to:

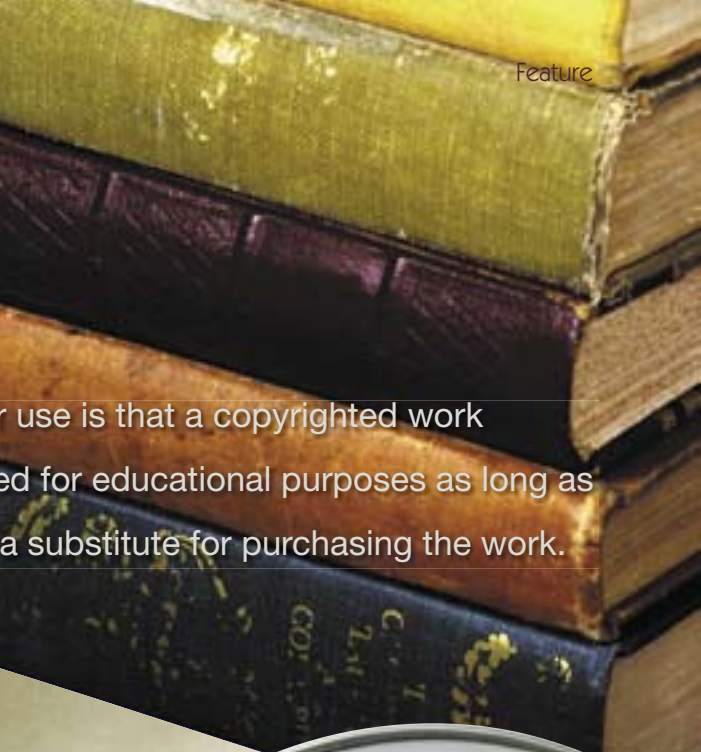
1. reproduce it in copies or phonorecords
2. prepare derivative works based upon it
3. distribute copies or phonorecords of it to the public by sale or other transfer of ownership or by rental, lease, or lending
4. (in the case of audiovisual works) perform it publicly
5. display it publicly

The basic idea of fair use is that a copyrighted work can be used or copied for educational purposes as long as the use is not solely a substitute for purchasing the work.

Fair Use Defined

The existing copyright law provides for the *fair use* of copyrighted materials, especially for educational and research-based uses. The basic idea of fair use is that a copyrighted work can be used or copied for educational purposes as long as the use is not solely a substitute for purchasing the work.

Educational fair use is a use of the work for teaching, scholarship, or research. Congress took special steps to protect educational fair use and authored special protections for this type of use in the copyright law. The fair use statute provides that making “multiple copies for classroom use” is an example of fair use.



Fair use generally arises as a defense to a copyright infringement action. In determining whether a use qualifies as *fair*, courts will analyze four factors:

1. the purpose of the use, including whether the use is commercial or for nonprofit educational purposes
2. the nature of the work; for example, is it a fact-based or highly creative work?
3. the amount of the work used in relation to the work as a whole; generally, the greater the amount used, the more likely that the use is not fair
4. the effect of the use on the market or potential income for the work; again, generally, the greater the market or profit effect, the less likely it is that the court will conclude the use is fair

Fair use is determined on a case-by-case basis, applying these above guidelines to the particular instance. The following examples help illustrate this approach and application of the four factors.

Example. A teacher wishes to make a copy of an article from a magazine to use in next year's lesson planning. Is this fair use? Yes, this is a prime example of fair use, so long as the article is for the teacher's personal use and reference.

Example. A teacher copies one article from a journal for class distribution. Is this fair use? Yes. Distribution of multiple copies for classroom use is a fair use, and the amount of work that the article represents as part of the whole journal allows for fair use.

Example. A teacher wishes to use a very expensive textbook for his or her class. Due to the high cost, the teacher makes copies of the entire book for class distribution. Is this a fair use? No. Although the use is educational, the teacher is using the entire work.

By providing copies of the entire work, the teacher has also affected the market for the book.

Example. An administrator wishes to show a video to school personnel for instructional purposes. Is this fair use? Yes. It is fair use as it is for instruction and no admission fees are charged.

Public Domain

Works in the public domain are freely available to all and can be freely copied. Public domain materials generally fall into two major groups:

1. works for which the copyright has expired (generally materials created before 1923, plus some later works)
2. works created by the U.S. federal government

Both of these groups have exceptions, though. Do not automatically assume that if a work appears to fall into one of these two groups, it is necessarily in the public domain. For example, Jane Austen's original works are in the public domain, but recent movie versions of her novels are not. Works prepared by the federal government are in the public domain, but works prepared for the government by others often are not.

Conclusion

Intellectual property laws and concepts, especially those related to copyright, are especially relevant for education professionals. A basic understanding and appreciation of those laws and concepts is important for informed use, as well as for the development of ethical students.



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