

The Fair Use Statute Section 107 of the Copyright Act of 1976. 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 phonorecords 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. 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;
 - Fair use is more likely when the copyrighted work is “transformed” into something new or of new utility, such as quotations incorporated into a paper, and perhaps pieces of a work mixed into a multimedia product for your own teaching needs or included in commentary or criticism of the original.
- (2)** the nature of the copyrighted work;
 - Fair use of a commercial work meant for the educational market is generally disfavored.
 - Courts more readily favor the fair use of nonfiction, rather than fiction.
 - Commercial audiovisual works generally receive less fair use than do printed works.
 - A consumable workbook will most certainly be subject to less fair use than would a printed textbook.
- (3)** the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - No exact measure – consider both quantitative and qualitative measures.
- (4)** the effect of the use upon the potential market for or value of the copyrighted work.
 - Occasional quotations or photocopies may have no adverse market effects, but reproductions of software and videotapes can make direct inroads on the potential markets for those works.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Just because the use is for education does not make it fair use. You must use the above four factors to determine whether the use is lawful.

Crews, K. D. (2000, May). *Fair-Use: Overview and Meaning for Higher Education*. Retrieved November 14, 2007, from Copyright Management Center, Indiana University-Purdue University-Indianapolis: <http://www.copyright.iupui.edu/highered.htm>