

Menlo School Copyright and Fair Use Guidelines

If your teaching materials include a document, story, image, sound file, or any kind of work that was created by another person, you need to seek permission for use from the copyright holder unless it can be considered Fair Use.

What is Fair Use?

1. Copyright law requires the permission of the copyright owner in order to reproduce, distribute, publicly perform, publicly display, or create derivative works of the copyrighted work.¹
2. Copyright law does not protect facts, theories, or concepts; it only protects a particular expression of them.
3. Fair use permits certain, limited reproduction of copyrighted works (which otherwise would constitute copyright infringement) for educational or classroom purposes without receiving permission from the copyright owner. However, fair use determinations are fact-specific and contextual.²

There are four factors defined by copyright law that help guide whether or not a use is “fair.”³ The four are:

- a. The **purpose and character of the use** (educational and “transformative” uses are given more latitude than commercial ones).

Fair

- Nonprofit
- Face-to-face Teaching
- Transformative
- Scholarship
- Personal

Questionable

- Criticism
- Commentary
- Parody
- Restricted Access

Requires Permission

- Commercial
- Entertainment
- Profit
- Lack of attribution

- b. The **nature of the copyrighted work** (factual works get less protection than creative works, see #2 above).

Fair

- Factual
- Published

Questionable

- A mixture of factual and imaginative
- Unpublished

Requires Permission

- Creative
- Entertainment
- Consumable materials (workbooks, answer sheets)

- c. The **amount and substantiality of the work** used in relation to the copyrighted work as a whole.

Fair

- Small amount – no more than about 10%
- Amount is appropriate for educational use
- One-time, spontaneous use

Requires Permission

- Large portion of work, or whole work
- The “heart” of the work
- Repeated use

- d. The **potential effect of the use on the market** for the copyrighted work *if everyone did the same thing*.

Fair

- After an evaluation of the first three factors, proposed use is tipping toward Fair Use
- User owns lawfully acquired copy
- No significant effect on the market or potential market
- No similar product marketed by the copyright holder

Requires Permission

- Replaces sale of the copyrighted work
- Significantly impairs market or potential market for the work
- Numerous copies made
- Use makes it publicly accessible

¹ 17 U.S.C. § 106.

² 17 U.S.C. § 107.

³ Ibid.

Copyright/Fair Use Examples

1. I would like to copy several chapters from an old textbook and post them as PDFs on Haiku for course enrichment.

- a. Purpose and character: nonprofit, scholarship, restricted access. *Fair/Questionable*
- b. Nature of the work: factual, published. *Fair*
- c. Amount and substantiality: 4 of 10 chapters, appropriate. *Fair/Questionable*
- d. Effect on the market: owned copy, out of date publication, potentially numerous copies made by students, newer publication available, no effect on market because readings are optional, first three tests lean toward fair use. *Fair*

The four tests tip toward fair use, so posting these chapters behind a password should be acceptable.

2. My students are creating ebooks that will include original text accompanied by images found on the Internet and music from their personal music collections. Images and music will be properly attributed. These will be posted on a class web page and made publicly available for parent access.

- a. Purpose and character: nonprofit, face-to-face teaching, scholarship. *Fair*
- b. Nature of the work: Published, creative. *Requires permission*
- c. Amount and substantiality: entire image, portion of the music. Image and music both probably *require permission* unless you can demonstrate that they are copyright-free
- d. Effect on the market: no significant effect, image is already publicly accessible but music requires purchase. *Borderline, but first three tests do not support fair use*

Because fair use is not well supported, it would be best to put the ebooks behind a password. You may want to direct students to copyright-free sites such as Creative Commons for music and images.

3. I found an interesting chart online depicting the cost of health care as a percentage of GDP in a variety of countries. I would like to include this chart as part of a packet that I hand out in my Economics class.

- a. Purpose and character: nonprofit, face-to-face teaching, scholarship. *Fair*
- b. Nature of the work: Published, factual/creative. *The data can be used freely but use of the artistic depiction requires permission.*
- c. Amount and substantiality: The whole chart. *Requires permission*
- d. Effect on the market: None. *Fair*

This is a creative depiction of factual information, which makes it tip toward requiring permission to use. Use of the specific data is fair, but the creative depiction of it is protected. Using it as a handout in a classroom setting is probably acceptable but the document should not be posted publicly online without the express permission of the owner.



Need help?

If you have a question about copyright or fair use, start by contacting Cathy Rettberg. The library has information about how to request permission to use copyrighted sources, and has manuals to assist with proper citation style. If further discussion is needed, Cathy will bring your question to members of the Copyright Council, who can provide additional guidance.