What is Copyright?
Copyright is the right of a creator (an artist, author, musician, etc.) to protect the tangible expression of an idea against unauthorized use. These expressions can include words, sounds, recorded performances, three-dimensional objects, multimedia, or computer software. Ideas can not be copyrighted, just how they are expressed. In addition, there are legal differences between copyright and licensing (generally creative works are copyrighted; software programs are generally licensed). You need to make sure that something is copyrighted before applying the fair use guidelines to the item.

Copyright gives the owner (and the publisher may own the copyright, not the original author) the right to copy, reproduce, distribute, sell, and create derivative works.

What is Fair Use?
Fair use describes the situations under which you can use some one else’s work. You can use something “fairly” under some specific conditions. Using someone else’s work for “purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.” Fair use laws are what allow you to copy an article from a journal for your files, or what allows you to quote a journal article in your paper or proposal. However, before you go out to copy all those articles for the students in your classroom, there are some rules to determine whether your use is actually fair use.

There are four factors to consider to see if your use is “fair use.”

1. The first factor to consider is the purpose or character of the use, including whether or not you will be using the work to make a profit. Even if you want to use a work for commercial use, the big question is usually whether or not the use diminishes the economic value of the original work, i.e., did the copyright holder lose any money because you didn’t pay him/her for the work? If the answer is yes, you may need to ask permission to use an item, or pay a royalty for its use.

2. The second factor to consider is the character or nature of the copyrighted work. Is the work available to the general public? Is it out of print? Is it factual (like a news photograph) or artistic (like a watercolor painting)? Using material that didn’t take much creativity to produce originally and is hard to find, is usually considered fair use.

3. The amount and substantiality of the portion used relative to the whole work is the third factor to consider in determining fair use. Are you using a small portion of the material or copying the entire work? Generally, the more you copy of an article, the more likely your chances of violating copyright laws.

4. The last factor to consider for fair use is the effect your use has on the market or value of the copyrighted work. Copying an entire copyrighted workbook for each student is a violation of copyright, especially if a publisher will sell you copies for your class.
Unpublished works are also covered under these guidelines. Most courts have not allowed the copying of unpublished works (manuscripts and letters, etc.) under the fair use guidelines.

Copyright and Fair Use Resources and Links

Laws Influencing Copyright and Fair Use
- Copyright Act (1976)
- Guidelines for Off-air Broadcast Programming for Educational Purposes (1981)
- Digital Millennium Copyright Act (DMCA) (1998)
- Copyright Term Extension Act (Bono Act) (1998)

Copyright Resources Online

US Copyright Office
http://lcweb.loc.gov/copyright/

US Copyright Office Circular 21: Reproductions of Copyrighted Works by Educators and Librarians (also includes information about guidelines for off-air broadcast programming)

US Copyright Office Fair Use
http://www.copyright.gov/fls/fairuse.html

DMCA Information
http://lcweb.loc.gov/copyright/legislation/dmca.pdf

TEACH ACT
http://thomas.loc.gov/cgi-bin/query/z?c107:S.487.ES:

Stanford University Copyright and Fair Use Center
http://fairuse.stanford.edu/

University of Texas Office of General Counsel, Intellectual Property
http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm

UTC Copyright Information
http://edtech.tennessee.edu/~set29/
Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions
with Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 106 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying the educational purpose may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

GUIDELINES

I. Single Copying for Teachers
A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. A chapter from a book;
B. An article from a periodical or newspaper;
C. A short story, short essay, or short poem, whether or not from a collective work;
D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper;

II. Multiple Copies for Classroom Use
Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. The copying meets the tests of brevity and spontaneity as defined below; and,
B. Meets the cumulative effect test as defined below; and,
C. Each copy includes a notice of copyright

Definitions

Brevity

(i) Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or, (b) from a longer poem, an excerpt of not more than 250 words.
(ii) Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
(iv) "Special" works: Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 works in their entirety. Paragraph "ii" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the works found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher.

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term. [The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

III. Prohibitions as to I and II Above
Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts there from are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.

C. Copying shall not:
   (a) substitute for the purchase of books, publishers' reprints or periodicals;
   (b) be directed by higher authority;
   (c) be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed MARCH 19, 1976.

Ad Hoc Committee on Copyright Law Revision: by SHELDON ELLIOTT STEINBACH.

Author-Publisher Group and Authors League of America by IRWIN KARP, Counsel.

Association of American Publishers, Inc. by ALEXANDER C. HOFFMAN, Chairman, Copyright Committee.