

Copyright Law and Universities

What You Should Know About the Educational Exception and Fair Use

What is the Educational Exception to Copyright Law?

The educational exception is a specific section of the copyright law which allows for more liberal use of copyrighted works if used in an educational setting. The work must be used in a closed academic setting (limited to a professor and his or her students) and must be beneficial to the education of the students present.

According to the Law:

In order to be considered an educational exception to copyright law under (17 U.S.C. § 110 (1)) the use of the work must take place:

1. as performance or display of a work by instructors or pupils;
2. in the course of face-to-face teaching activities;
3. at a non-profit educational institution; and
4. in a classroom or similar place devoted to instruction.

Note- All four factors must be satisfied for a use to fall within the educational exception of copyright law.

In the Classroom:

When using a copyrighted work in the classroom, the following questions can be used as a guideline to assess whether or not the use of the work falls under the educational exception:

1. Will the work be used in a closed academic setting? (solely between the professor and his or her students)
2. Is the purpose of using this work purely educational?
3. Will the students' education benefit from the use of the work?
4. Was the copy of the work obtained/created legally?

Each use of a copyrighted work should be analyzed on a case-by-case basis and the above questions must be considered before a work is used. Keep in mind that works used in a classroom solely for entertainment purposes will not fall under the educational exception.

What is Fair Use?

The fair use doctrine is a specific provision of copyright law that allows many copyrighted works to be re-used, scanned, and/or copied. According to the fair use doctrine, found at 17 U.S.C. § 107, the use of copyrighted material will not be considered copyright infringement when used “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.”

In a University Setting:

The following are typical situations in which faculty may question whether their use of a copyrighted work falls within the fair use doctrine:

E-Reserves-

When putting an article on e-reserve, professors are asked to comply with the following provisions:

1. Articles uploaded to e-reserve may not be made available for any two consecutive semesters (i.e. fall/spring, spring/summer, summer/fall).
2. Professors uploading scanned articles from their personal libraries should consult with the

University's librarians regarding the percentage of the work used. If possible, the material itself should be placed on reserve in the University Library.

3. The Library and/or the Office of the General Counsel are available to answer any questions concerning e-reserve.

In the Classroom-

1. Each use must be evaluated separately. The questions below should be used to determine whether or not the material falls within the fair use doctrine.
2. Situations that are not considered fair use in a classroom setting include use of copyrighted materials for the sole purpose of entertainment.

Questions to ask yourself when using a copyrighted work:

The following four questions are traditionally used as an aid when determining whether or not a work falls within the fair use doctrine. Each use of a copyrighted work should be evaluated by these standards on a case-by-case basis.

1. Will the work be used in an educational setting? (Works used in a closed academic setting are more likely to be considered fair use).
2. Is the work fact or fiction? (A work of fact leans more towards fair use than does a work of fiction).
3. Was the material taken appropriate in kind and amount, considering the nature of the copyrighted work and the use? (The less amount of material taken, the more likely it is to be considered fair use).
4. Has or will the use adversely impact the copyright owner's sales? (If there is a large adverse impact to the copyright owner's sales, it is less likely to fall within the fair use doctrine).

In addition, courts recommend asking a fifth question (listed below) to further clarify whether the use of the work falls under the fair use doctrine.

5. Does the use of copyrighted material transform the material by using it for a different purpose than that of the original, or did it just repeat the work with the same intent and value as the original? (A work that transforms material will take existing material and use it in a new way and for a new purpose).

Use your best judgment. Do you feel the work reasonably falls under the fair use doctrine? According to 17 U.S.C § 504(c)(2), an educator will not be liable for copyright infractions if he/she makes a "good faith determination" that his/her action complies with the fair use doctrine.

Keep in mind:

Fair use will always be judged on a **case-by-case basis**.

Not Sure?

Contact the Office of the General Counsel with any questions or comments regarding the fair use doctrine or copyright law in general.

Phone: 732-571-3598

Email: jochrist@monmouth.edu