

X. Copyright

As school librarians, it is incumbent upon us to enforce copyright laws. Many of our students and staff will ask to photocopy entire documents or portions of print materials, make audio or video copies. As professionals, we must adhere to copyright laws, model proper use of materials and educate our clients about the nuances of the copyright laws.

Copyright is defined by Merriam Webster's Dictionary as “the exclusive legal right to reproduce, publish, sell or distribute the matter and form of something (as a literary, musical, or artistic work).” Title 17 of the United States Code, also known as the Copyright Law of the United States, delineates the rights of the owner of the copyrights, the responsibilities of those who choose to use copyrighted material and penalties for infringement. The complete document may be viewed at <http://www.copyright.gov/title17/>. Originally passed in 1976, this law has been amended over the years to reflect the new forms in which works are produced and protected such as digital creations, video creations, audio creations, satellite creations, etc. *Interpretations of certain sections of the law are entered in italics.*

Fair Use

There are provisions in the law to use copyrighted material in a manner in which there is not an infringement of copyright. These fall under the Fair Use provisions of the copyright law (section 107). Specifically:

§ 107. 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; (*emphasis on non-profit educational purposes = school instructional setting*)

(2) the nature of the copyrighted work; (*Items that have been published may be used more easily than those that have not been. If an item is very creative and generating income for the creator, there is more protection for the copyright owner.*)

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (*Note that a specific amount or percentage is not mentioned. A large portion being used would suggest that the use does not fall under Fair Use.*)



(4) the effect of the use upon the potential market for or value of the copyrighted work.
*What is the effect on the market by using the item? Will fewer people purchase the item?
Are you negatively impacting the commercial value by using the item?)*

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. After March 2, 1989, ALL original works in tangible form are considered copyrighted, and are protected by copyright law. Original works do not have to be registered, but there are advantages to registration. For more information, visit <http://www.copyright.gov/circs/circ38b.pdf>.

All four factors of the law **must be met** in order to satisfy the requirements of Fair Use. If all four factors are not met, an individual or school may write directly to the owner of the copyrighted material to obtain permission. In some cases, royalty fees may be charged. This Handbook has many examples of our obtaining permission (and, in some cases, being limited or denied permission) to use material covered by the copyright and trademark laws.

A sample “request for permission” letter is included at the end of this chapter.

Section 108 Limitations on exclusive rights: Reproductions by libraries and archives

The complete document may be viewed at
<http://www.copyright.gov/title17/92chap1.html#108>.

Some highlights of note are:

(a) Except as otherwise provided in this title and notwithstanding the provisions of [section 106](#), it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if —

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

...And...

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if —

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

...And...

(f) Nothing in this section -

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by [section 107](#);

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by [section 107](#), or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

Music Copyright in Schools

Digital Files

Many students carry portable drives on which they can download and share music files. Schools should discourage all illegal sharing and downloading in the following ways:

1. Acceptable use policies should prohibit the use of school computers or network to share or download illegally obtained copies of music.
2. Copyright education should be a part of the curriculum. Citing files will excuse one from plagiarism, but will not necessary protect against copyright infringement!
3. If needed, software can be used to block student abilities to download illegal files.

Sheet Music

The United States Copyright Law: *A Guide for Music Educators*

<http://www.menc.org/resources/view/united-states-copyright-law-a-guide-for-music-educators> summarizes copyright law for music teachers.

As regards sheet music, all teachers should be aware of the following:

Teachers may:

- Make a copy for a performance only in an emergency and when the copy is to be replaced by a purchased copy
- Make a classroom set of up to 10% of a musical work, but only if that does not constitute a performable unit.
- Display a legally owned copy of a musical piece by means of an opaque projector

Teachers may not:

- Copy to avoid purchase
- Create anthologies
- Display a legally owned copy of a musical piece by creating a transparency, slide, or filmstrip

Teachers must

- Include a copyright notice on any copy that is made

Audio Visual Copyright in Schools (videos, VHS tapes, Laser discs, DVDs, etc.)

Performance & display (Fair Use)

To constitute fair use the audio visual must be used in a face-to-face teaching situation only and satisfy both conditions;

- a. The performance of the AV work must meet the instructional objective
- b. The AV work must be a “lawfully made” copy

For use in Projects (Fair Use)

- a. 10% or 3 minutes (whichever is less)
- b. must be a lawfully acquired copyrighted work
- c. credit the source
- d. state that certain works have been used under the fair use exception of the U. S. Copyright Law

Public Performance in Schools

This would be needed when an audio visual is being shown as a reward, to fill in for indoor recess, bus ride going to/from a field trip, etc. The school will need either a license or to contact the copyright holder directly. Below are some companies from which these permissions may be made;

Criterion Pictures USA, Inc.
8238-40 Lehigh
Morton Grove, IL 60053-2615
1-800-890-9494 or 1-847-470-8164
Fax: 1-847-470-8194
Email: greatmovies@media2.criterionpic.com
<http://www.criterionpicusa.com>

Kino International Corp.
333 W. 39th Street, Ste. 503
New York, N.Y. 10018
1-800-562-3330 or 1-212-629-6880
Fax: 1-212-714-0871
Email: contact@kino.com or filmrentals@kino.com
<http://www.kino.com>

Milestone Film & Video
P.O. Box 128
Harrington Park, NJ 07640-0128
1-800-603-1104 or 1-201-767-3117
Fax: 1-201-767-3035
Email: info@milestonefilms.com
<http://www.milestonefilms.com>

Movie Licensing USA
A division of Swank Motion Pictures, Inc.
201 South Jefferson Avenue
St. Louis, MO 63103-2579
Schools: 1-877-321-1300
Libraries: 1-888-267-2658
Other organizations: 1-800-876-5577
Fax: 1-314-287-1748 (schools), 1-877-876-9873 (libraries)
Email: mail@movlic.com or mail@swank.com
<http://www.movlic.com>
<http://www.swank.com>



New Yorker Films
16 West 61st Street
New York, NY 10023
1-877-247-6200 or 1-212-247-6110
Fax: 1-212-307-7855
Email: info@newyorkerfilms.com
<http://www.newyorkerfilms.com>

Copyright and New Technologies

The Internet and freeware are NOT public domain. The Copyright Act of 1976 fair use guidelines do not address many of our “NEW” technologies. To date there has been no consensus over rights in this area.

Posting copyrighted material to your Web site carries greater liability because now the information is accessible to all.

Fair Use as it applies to instructor and student project use

- a. Only for the course for which they were made
- b. Portfolios to show examples of the student’s work
- c. Job interviews, graduate school interviews, tenure review
4. Presentation at peer workshops or conferences

Clip Art

Clip art is also protected by copyright law. Most word processing programs have free clip art that can be downloaded from their website. You must agree to the terms of use of the software provider before you can download the images.

There are many “free clip art” sites on the Internet. Read the terms of use carefully. Some sites may require you to cite the source and some may require a link to the clip art site.

Read the terms of use carefully before publishing anything using clip art.

Notice to post

It is strongly suggested that the following notice be posted on photocopiers, computers and any other machines capable of duplication in the school library media center:

NOTICE WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement. This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

This notice is available in the brochure “Reproduction of Copyrighted Works by Educators and Librarians” which is available from the United States Copyright Office at <http://www.copyright.gov/circs/circ21.pdf>.

Items not protected by copyright:

URL
Blank forms
Short phrases
Names
Titles
Ideas
Works in the public domain i.e., works created by the U.S. Government



Sample letter to the Copyright Owner

Date

Permissions Department
Pretend Book Company
600 Makebelieve Blvd.
Anytown, State Zipcode

Dear Sir/Madam:

I am the Library Media Specialist at Pinetree High School in Excellent, Maine. I would like permission to copy the following for use in my classes during the upcoming school year:

Title:	Everything you want to know to research
Copyright:	Pretend Book Company, 2006
Author:	Jane Doe
Material to be Duplicated:	Chapter 7 – How to research online
Number of copies:	200
Distribution:	The materials will be distributed to the freshman English class in conjunction with their second semester research project.
Type of reprint:	Photocopy
Use:	This will be used as supplemental teaching materials

Permission is granted for the above specified use of the material: specify whether this is permission for print or electronic works.

Date: _____

Name: _____

Signature: _____

I have enclosed a stamped, self-addressed envelope for your convenience. I look forward to hearing from you.

Sincerely,
(your signature here)

Your name
Library Media Specialist
Pinetree High School



Sample email to a webmaster

To: Webmaster awesome webpage
Subject: seeking permission

Good morning.

I'm the Public Relations Chair for the Maine Association of School Libraries (MASL). One of my "duties" in that capacity is to update our School Librarians Handbook - a volume that will be available in print as well as digitally through our webpage www.maslibraries.org. One of the chapters in the new handbook will deal with copyright. I was wondering if you would agree for us to have a short blurb about (*name the website*) and a link to the site included in the handbook? Is there any particular language you would prefer we use?

Thank you for your consideration. An email response giving permission would be wonderful. I look forward to hearing from you.

Leanna Librarian
Public Relations Chair, MASL
Library Media Specialist
Pinetree High School
123 Main Street
Excellent, ME 04xxx
[email address](#)

CHECKLIST FOR FAIR USE

Please complete and retain a copy of this form in connection with each possible "fair use" of a copyrighted work for your project

Name: _____ Date: _____ Project: _____

Institution: _____ Prepared by: _____

PURPOSE

Favoring Fair Use

- Teaching (including multiple copies for classroom use)
- Research
- Scholarship
- Nonprofit Educational Institution
- Criticism
- Comment
- News reporting
- Transformative or Productive use (changes the work for new utility)
- Restricted access (to students or other appropriate group)
- Parody

Opposing Fair Use

- Commercial activity
- Profiting from the use
- Entertainment
- Bad-faith behavior
- Denying credit to original author

NATURE

Favoring Fair Use

- Published work
- Factual or nonfiction based
- Important to favored educational objectives

Opposing Fair Use

- Unpublished work
- Highly creative work (art, music, novels, films, plays)
- Fiction

AMOUNT

Favoring Fair Use

- Small quantity
- Portion used is not central or significant to entire work or "heart of the work"
- Amount is appropriate for favored educational purpose

Opposing Fair Use

- Large portion or whole work used
- Portion used is central to work

EFFECT

Favoring Fair Use

- User owns lawfully acquired or purchased copy of original work
- One or few copies made
- No significant effect on the market or potential market for copyrighted work
- No similar product marketed by the copyright holder
- Lack of licensing mechanism

Opposing Fair Use

- Could replace sale of copyrighted work
- Significantly impairs market or potential market for copyrighted work or derivative market for copyrighted work or derivative
- Reasonably available licensing mechanism or use of the copyrighted work
- Affordable permission available for using work
- Numerous copies made
- You made it accessible on Web or in other public forum
- Repeated or long-term use

This document is provided as a courtesy of the Copyright Management Center, IUPUI, 530 W. New York St., Indianapolis, IN 46202.

For further information and updates please visit <http://www.copyright.iupui.edu/>. This document last updated March 10, 2003.

Useful Copyright Websites

www.librarycopyright.net The Copyright Advisory Network maintains this site. You may post questions and receive a response within about 48 hours. The site contains a digital copyright slider chart to help determine if a work is in the public domain. This site is useful for non-professional feedback, NOT LEGAL ADVICE from fellow librarians and copyright specialists.

<http://www.ala.org/ala/washoff/woissues/copyrightb/copyright.cfm> Many links to copyright articles, discussions and FAQ's.

<http://www.infography.com/content/734926788478.html> Links to educational institutions, legal interpretations, non-print FAQ's.

<http://www.stfrancis.edu/cid/copyrightbay/> An interactive site that explains some of the nuances of the copyright laws tests the user for correctness and answers FAQ's.

<http://www.copyright.gov/> The U.S. Copyright Office. Full text of the law is located here. You may also download and print brochures and notices from this site.

<http://www.wo.ala.org/districtdispatch/?p=421> If you would rather have a copyright slider of your own, they are available for purchase for a nominal amount here.

http://techlearning.com/techlearning/pdf/events/techforum/tx05/TeacherCopyright_chart.pdf This chart is an easy to read chart that answers many questions teachers may have.

<http://www.chillingeffects.org> The Chilling Effect Clearinghouse has a very user-friendly FAQ page with common questions on copyright.