



# Copyright, Fair Use, & Educational Multimedia FAQ

A Blackboard Tip Sheet

## ***General Copyright Information***

### **What is copyright?**

Copyright protects certain kinds of "original works of authorship" – whether published or unpublished. Copyright grants the author of the work the legal right to determine how or whether the work will be reproduced, distributed, displayed, or performed, as well as the right to produce derivative works based on the original.

### **What is covered by copyright?**

According to Title 17 of the U.S. Code, copyright protects works "fixed in any tangible medium of expression" in these categories:

- literary works
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic, and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

These categories are interpreted liberally. For example, "literary works" does not refer to literature of the Western canon, but anything written in a language. Computer programs are protected as part of this category, as are personal letters.

If it is not set in a tangible medium -- for example, an improvised musical composition that is not recorded -- then it cannot be copyrighted.

### **What is not covered by copyright? What is the difference between copyright, trademarks, and patents?**

Copyright does not protect names, titles, or slogans. For example, you may copyright a song (both the music and the lyrics), but the song's title is not protected. If used in the course of business, then trademark law may protect names, titles, or slogans.

Copyright also does not protect ideas, concepts, or facts -- it only protects the particular expression of those ideas. For example, the text of a particular book about World War II may be copyrighted, but you can't prevent someone else from writing about the same topic. Another example: a particular calendar -- its graphic

design, page layout, images, etc., -- is copyrightable, but that doesn't prevent someone else from creating a different calendar for the same year. Patents may protect certain ideas, such as inventions.

### **How do I obtain a copyright for a work I have created?**

You *automatically* own the copyright to any work you create as soon as it is fixed in a tangible medium. You are not required to take any other action to claim your copyright. However, there are certain things you can do to communicate or help secure your copyright. You can indicate your ownership by the phrase "copyright by" or the symbol "©", the date, and your name. You can also register your ownership with the U.S. Copyright office for a small fee for additional protection. In many instances registration is a prerequisite for taking someone to court for copyright infringement.

### **Is content on the Internet copyrighted?**

Yes, everything on the Internet (including everything on the World Wide Web) is copyrighted. It is a common misconception that everything on the Web is in the public domain. While it is true that documents on the Web (and in other digital formats) are easier to reproduce and distribute than other media, the ease of reproduction and distribution does not change the copyright. Digital content is still copyrighted, and copying or reproducing it without permission may be illegal.

### **Is linking to something on the Web a copyright violation?**

When you create a hyperlink from one Web page to another, you have not made a copy of the original work, so this is not a copyright violation. Generally, you are also not expected to request permission to link to a Web page, though it is often considered courteous to do so.

## ***Copyright in Education***

### **What is "fair use"?**

Copyright law allows portions of a copyrighted work to be used without the author's permission for specific purposes. This is referred to as "fair use." Fair use allows for portions, or in some cases the entirety, of copyrighted works to be used for purposes such as "criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research."

According to the Title 17 of the U.S. Code, whether a use is fair use is based on:

- "the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes
- the nature of the copyrighted work
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- the effect of the use upon the potential market for or value of the copyrighted work. 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."

**What is the difference between plagiarism and copyright?**

Plagiarism -- representing someone else's work as your own -- is an academic convention, not a legal concept.

***Fair Use and Online Courses*****How does fair use apply to online courses?**

In 1996, a Congressional subcommittee on intellectual property published a report called the ***Fair Use Guidelines for Educational Multimedia***. Online teaching and learning falls under the broad category of "educational multimedia." While these guidelines are not law, they have become commonly accepted standards followed by educational institutions and the courts. Under these guidelines you may make fair use of copyrighted digital media for specific educational tasks under certain limitations. Because digital media is so much easier to reproduce and distribute than other media, the fair use limitations on digital media are more stringent than fair use guidelines for other media.

The *Guidelines* cover educational material that is created by faculty as part of curriculum-based instruction, or by students as part of an assignment, whether face-to-face, self-directed study, or at a distance. The *Guidelines* also provide provisions for inclusion of copyrighted multimedia as part of conference presentations or professional portfolios. Limitations are based on time, portion, copying, and distribution.

According to the *Guidelines*, instructors should limit the use of the educational multimedia projects containing copyrighted material to a period of two years after the first instructional use. However, this may be affected by the limitations on copying.

The *Guidelines* also recommend "that the technology prevents the making of copies of copyrighted material," meaning that every effort should be made to prevent the consumer of the content from making more copies. This is not possible to achieve via the Web. In the absence of technology that limits copying, the *Guidelines* say that the students should be told not to make copies, and, more importantly, that the material should only be available for 15 days. After that 15-day period, the material could be put on reserve for up to two years. After the two-year period, permission from the copyright holder would be required.

The copying and distribution limitations are most restrictive regarding remote instruction (distance learning). Distribution must be limited to students enrolled in the course and there must be "technological limitations on access to the network and educational multimedia project (such as password or PIN)."

Portion limitations address the amount of a single copyrighted work that can be included. This varies depending upon media:

Media	Allowable Portion for Fair Use
Motion media (e.g., video)	Up to 10% or 3 minutes, whichever is less.
Text material	Up to 10% or 1000 words, whichever is less.
Music, Lyrics, Music Video	Up to 10%, but no more than 30 seconds.
Illustrations, Photographs	No more than 5 images from an artist/photographer, or no more than 10% or 15 works from a published collective work.
Numerical Data Sets (e.g. databases)	Up to 10% or 2500 fields, whichever is less.

### ***Fair Use and Blackboard***

#### **How do I apply the *Fair Use Guidelines* in Blackboard software?**

To comply with the *Fair Use Guidelines for Educational Multimedia* when using Blackboard software, you could:

- a) Make sure the portions of copyrighted material you are using in your course meet the standards of the *Guidelines*.
- b) Put the copyrighted material in a section of your Blackboard course site that is secured (using Course Options in the Control Panel). This should meet the distribution requirement, because only students enrolled in your course will have access to that area.
- c) Since Blackboard course sites are Web-based, it is not possible for the technology to prevent copies from being made. Therefore, copyrighted material could be made available (using the Availability option on your content) for no more than a 15-day period, and your students should be instructed to not make their own copies of the material.

In most cases, this should comply with the Congressional guidelines on fair use. However, you should **always consult with your institution's legal counsel** to make sure you are within fair use parameters and are adhering to your institution's own intellectual property guidelines.