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The Educator's Guide to Copyright and Fair Use

By Hall Davidson

Back by popular demand, a new version of our practical quiz by educator and multimedia guru Hall Davidson.

This is the way it happens: You're a teacher. You find the perfect resource for a lesson you're building for your class. It's a picture from the Internet, or a piece of a song, or a page or two from a book in the library or from your own collection. There's no time to ask for permission from who owns it. There isn't even time to figure who or what exactly does own it. You use the resource anyway, and then you worry. Have you violated copyright law? What kind of example are you setting for students?

Or you're the principal. You visit a classroom and see an outstanding lesson that involves a videotape, or an MP3 audio file from the Web, or photocopies from a book you know your school doesn't own. Do you make a comment?

The Original Intent

Were the framers of the Constitution or the barons of Old English law able to look over your shoulder, they would be puzzled by your doubts because all of the above uses are legal. Intellectual property was created to promote the public good. In old England, if you wanted to copyright a book, you gave copies to the universities. According to Supreme Court Justice Sandra Day O'Connor, "The primary objective of copyright is not to reward the labor of authors . . . but encourage others to build freely upon the ideas and information conveyed by a work." In other words, copyright was created to benefit society at large, not to protect commercial interests.

Nowhere is this statement truer than in the educational arena. In fact, educators fall under a special category under the law known as "fair use." The concept, which first formally appeared in the 1976 Copyright Act, allows certain groups to use intellectual property deemed to benefit society as a whole, e.g., in schools for instructional use. However, it deliberately did not spell out the details. Over the years, fair use guidelines have been created by a number of groups—usually a combination of educators, intellectual property holders, and other interested parties. These are not actual laws, but widely accepted "deals" the educational community and companies have struck and expect each other to follow.

What follows is a new version of "The Educators' Lean and Mean No FAT Guide to Fair Use," published in *Technology & Learning* three years ago. As you take the quiz on page 28, you will learn that no matter the technology—photocopying, downloads, file sharing, video duplication—there are times when copying is not only acceptable, it is encouraged for the purposes of teaching and learning. And you will learn that the rights are strongest and longest at the place where educators need them most: in the classroom. However, schools need to monitor and enforce fair use. If they don't, as the Los Angeles Unified

School District found out in a six-figure settlement, they may find themselves on the losing end of a copyright question.

Know Your Limitations-and Rights

It has never been a more important time to know the rules. As a result of laws written and passed by Congress, companies are now creating technologies that block users from fair use of intellectual property—for example, teachers can't pull DVD files into video projects, and some computers now block users from inputting VCRs and other devices. In addition to helping schools steer clear of legal trouble, understanding the principles of fair use will allow educators to aggressively pursue new areas where technology and learning are ahead of the law, and to speak out when they feel their rights to copyright material have been violated.

Now, take a quiz that will assess your knowledge of what is allowable—and what isn't—under fair use copyright principles and guidelines. There's also a handy chart that outlines teachers' fair use rights and responsibilities. Good luck.

[http://www.techlearning.com/db_area/archives/TL/2002/10/copyright_chart.pdf—address for the chart]

Fair to Share?

Speaking of copyright, if you plan to photocopy this article for your staff (which we encourage you to do as many times as you wish), kindly send us a quick note at techlearning_editors@cmp.com.

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The Educator's Guide to Copyright and Fair Use (cont'd)

The Copyright Quiz

Answer True or False to the following 20 questions.

Part I: Computers and Software

1. A student snaps in half a CD-ROM the teacher really needed for her next class. The teacher decides to make a back-up copy of all her crucial disks so it never happens again. This is permissible.
2. A technology coordinator installs the one copy of *Photoshop* the school owns on a central server so students are able to access it from their classroom workstations. This is a violation of copyright law.
3. A school has a site license for version 3.3 of a multimedia program. A teacher buys five copies of version 4.0, which is more powerful, and installs them on five workstations in the computer lab. But now when students at these workstations create a project and bring it back to their classrooms, the computers (running 3.3) won't read the work! To end the chaos, it's permissible to install 4.0 on all machines.
4. The state mandates technology proficiency for all high school students but adds no money to schools' software budgets. To ensure equity, public schools are allowed to buy what software they can afford and copy the rest.
5. A geography teacher has more students and computers than software. He uses a CD burner to make several copies of a copyright interactive CD-ROM so each student can use an individual copy in class. This is fair use.

Part II: The Internet

6. A middle school science class studying ocean ecosystems must gather material for multimedia projects. The teacher downloads pictures and information on marine life from various commercial and noncommercial sites to store in a folder for students to access. This is fair use.
7. An elementary school designs a password-protected Website for families and faculty only. It's OK for teachers to post student work there, even when it uses copyright material without permission.
8. A student film buff downloads a new release from a Taiwanese Website to use for a humanities project. As long as the student gives credit to the sites from which he's downloaded material, this is covered under fair use.
9. A technology coordinator downloads audio clips from MP3.com to integrate into a curriculum project. This is fair use.

10. A teacher gets clip art and music from popular file-sharing sites, then creates a lesson plan and posts it on the school Website to share with other teachers. This is permissible.

Part III: Video

11. A teacher videotapes a rerun of *Frontier House*, the PBS reality show that profiles three modern families living as homesteaders from the 1880s did. In class, students edit themselves "into" the frontier and make fun of the spoiled family from California. This is fair use.
12. A student tries to digitize the shower scene from a rented copy of *Psycho* into a "History of Horror" report. Her computer won't do it. The movie happens to be on an NBC station that week, so the teacher tapes it and then digitizes it on the computer for her. This is fair use.
13. A history class videotapes a Holocaust survivor who lives in the community. The students digitally compress the interview, and, with the interviewee's permission, post it on the Web. Another school discovers the interview online and uses it in their History Day project. This is fair use.
14. On Back-to-School night, an elementary school offers child care for students' younger siblings. They put the kids in the library and show them Disney VHS tapes bought by the PTA. This is permissible.
15. A teacher makes a compilation of movie clips from various VHS tapes to use in his classroom as lesson starters. This is covered under fair use.

Part IV: Multimedia

16. At a local electronics show, a teacher buys a machine that defeats the copy protection on DVDs, CD-ROMs, and just about everything else. She lets her students use it so they can incorporate clips from rented DVDs into their film genre projects. This is fair use.
17. A number of students take digital pictures of local streets and businesses for their Web projects. These are permissible to post online.
18. A student wants to play a clip of ethnic music to represent her family's country of origin. Her teacher has a CD that meets her needs. It is fair use for the student to copy and use the music in her project.
19. A high school video class produces a DVD yearbook that includes the year's top ten music hits as background music. This is fair use.
20. Last year, a school's science fair multimedia CD-ROM was so popular everyone wanted a copy of it. Everything in it was copied under fair use guidelines. It's permissible for the school to sell copies to recover the costs of reproduction.

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The Educator's Guide to Copyright and Fair Use (cont'd)

The Answers

Part I: Computers and Software

1. A student snaps in half a CD-ROM the teacher really needed for her next class. The teacher decides to make a back-up copy of all her crucial disks so it never happens again. This is permissible.

True. Technically, this should be done in the library. The law allows archival copies, and, in some cases, lost, stolen, or damaged originals may be replaced with copies if the originals are unavailable or unreasonably priced.

2. A technology coordinator installs the one copy of *Photoshop* the school owns on a central server so students are able to access it from their classroom workstations. This is a violation of copyright law.

False. As long as one copy is not being used simultaneously, it's OK to distribute the software via the server. However, when districts or schools fail to monitor and enforce simultaneous use, they get in trouble. (On a network, it's easy to track if a program is being used in more than one location.)

3. A school has a site license for version 3.3 of a multimedia program. A teacher buys five copies of version 4.0, which is more powerful, and installs them on five workstations in the computer lab. But now when students at these workstations create a project and bring it back to their classrooms, the computers (running 3.3) won't read the work! To end the chaos, it's permissible to install 4.0 on all machines.

False. Alas, the teacher bought a product that isn't backwards-compatible and should complain to the manufacturer. It's likely the law would deem it reasonable to install 3.3 in the new machines (after removing 4) until the issue is resolved.

4. The state mandates technology proficiency for all high school students but adds no money to schools' software budgets. To ensure equity, public schools are allowed to buy what software they can afford and copy the rest.

False. Some interpretations of the 11th Amendment of the Constitution suggest that state schools may in fact be exempt from copyright prosecutions; however, following the guidelines encourages software and hardware makers to keep making quality products for us to buy.

5. A geography teacher has more students and computers than software. He uses a CD burner to make several copies of a copyright interactive CD-ROM so each student can use an individual copy in class. This is fair use.

False. Just as with a print encyclopedia, one student at a time has access to a piece of software. The number of students who can use a software program simultaneously is restricted to the number of copies the school owns (but be sure to check out #2 above).

Part II: The Internet

6. A middle school science class studying ocean ecosystems must gather material for multimedia projects. The teacher downloads pictures and information on marine life from various commercial and noncommercial sites to store in a folder for students to access. This is fair use.

True. The Web may be mined for resources. Download away (of course, don't hack into subscription sites)! But remember: you can't put these projects back up on the Web without permission from the copyright holders.

7. An elementary school designs a password-protected website for families and faculty only. It's OK for teachers to post student work there, even when it uses copyright material without permission.

True. If the site really is protected, then this is considered OK. The school should monitor its Web hits, though, and make sure the outside world isn't sneaking in.

8. A student film buff downloads a new release from a Taiwanese website to use for a humanities project. As long as the student gives credit to the sites from which he's downloaded material, this is covered under fair use.

False. Educators may use "legitimately acquired" material without asking permission, but many file-sharing sites are suspect in this area. Use common sense to determine if those peer-to-peer resources are legitimate or pirated. (You can also check copyright ownership at www.loc.gov or www.mpa.org.)

9. A technology coordinator downloads audio clips from MP3.com to integrate into a curriculum project. This is fair use.

True. MP3.com pays for its archives, so the material there is legitimately acquired. Be wary of some of the other peer-to-peer sites, however (see #8).

10. A teacher gets clip art and music from popular file-sharing sites, then creates a lesson plan and posts it on the school website to share with other teachers. This is permissible.

False. Legitimately acquired material can be used in classrooms. However, under the current law, no teacher can redistribute such material over the Net or any other medium. You can use it, but you can't spread it around.

Part III: Video

11. A teacher videotapes a rerun of *Frontier House*, the PBS reality show that profiles three modern families living as homesteaders from the 1880s did. In class, students edit themselves "into" the frontier and make fun of the spoiled family from California. This is fair use.

True. Video can be pulled into multimedia projects. I live in California, too, so I share their pain.

12. A student tries to digitize the shower scene from a rented copy of *Psycho* into a "History of Horror" report. Her computer won't do it. The movie happens to be on an NBC station that week, so the teacher tapes it and then digitizes it on the computer for her. This is fair use.

True. Manufacturers are instituting blocking technology, authorized under the law, so newer material like VHS rentals and DVDs block educators from their constitutional right to use material for teaching. It's time to begin complaining. In the meantime, educators should grab all the laserdiscs they can find. They're unblocked.

13. A history class videotapes a Holocaust survivor who lives in the community. The students digitally compress the interview, and, with the interviewee's permission, post it on the Web. Another school discovers the interview online and uses it in their History Day project. This is fair use.

True. That's the other side of fair use. Just as you can use other people's intellectual property for educational purposes without permission, so can your own be used.

14. On Back-to-School night, an elementary school offers child care for students' younger siblings. They put the kids in the library and show them Disney VHS tapes bought by the PTA. This is permissible.

False. Video (like everything else) is not covered under fair use for entertainment or reward. The use described is entertainment, pure and simple. However, Disney will sell you a one-time license for \$25 that makes this legal use. Call Disney at (818) 560-1000; ask for "Rights;" and prepare to trade faxes.

15. A teacher makes a compilation of movie clips from various VHS tapes to use in his classroom as lesson starters. This is covered under fair use.

False. The current guidelines exclude the creation of video compilations. However, FilmClipsOnline.com offers film clips for free (the VHS tape on American values is particularly good.) E-mail Michael Rhodes at imrhodes@msn.com, or call (805) 984-5907.

Part IV: Multimedia

16. At a local electronics show, a teacher buys a machine that defeats the copy protection on DVDs, CD-ROMs, and just about everything else. She lets her students use it so they can incorporate clips from rented DVDs into their film genre projects. This is fair use.

True. Manufacturing these machines is now prohibited (it previously wasn't). But teachers have the right to use material that is technologically blocked. Personally, as a teacher, I would absolutely use it to unlock content for students, but I would absolutely not use it to make copies at home.

17. A number of students take digital pictures of local streets and businesses for their Web projects. These are permissible to post online.

True. You may use the images in projects and post such images on the Web. Some sites, like Disneyland and architectural landmarks, may be considered copyright material, however, and might ask you to remove the image. People (not selectively chosen) in public places are as a rule OK in photographs.

18. A student wants to play a clip of ethnic music to represent her family's country of origin. Her teacher has a CD that meets her needs. It is fair use for the student to copy and use the music in her project.

True. See the chart on [the following page] for limitations on length. To my mind, the music guidelines need to be rethought and broadened. Until then, look for CDs that are created royalty-free.

19. A high school video class produces a DVD yearbook that includes the year's top ten music hits as background music. This is fair use.

False. This is not fair use. Yearbooks are not generally intended to be instructional. Plus, it's not permissible to use entire songs. If you're using pieces of songs and analyzing them as a reflection of the times students lived in, that's different.

20. Last year, a school's science fair multimedia CD-ROM was so popular everyone wanted a copy of it. Everything in it was copied under fair use guidelines. It's permissible for the school to sell copies to recover the costs of reproduction.

False. Fair use allows educational use of copyright material, true, but it does so only if there is no anticipation of wider distribution.

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