Copyright and Fair Use

Introduction
This tip sheet offers some guidelines, tools, and key resources on issues related to copyright and fair use. This document is not definitive or written by legal experts. We encourage you to consult other sources, including legal representation, to address specific questions or concerns.

Copyright is the legal right to reproduce, publish, sell, or distribute the matter and form of something (as a literary, musical, or artistic work). Fair use is “a legal doctrine holding that portions of copyrighted materials may be used without permission of the copyright owner provided the use is fair and reasonable, does not substantially impair the value of the materials, and does not curtail the profits reasonably expected by the owner” (Merriam-Webster).

Copyright Issues for Print
Although use of copyrighted material can many times be considered fair use in nonprofit educational situations, there is no “educational use umbrella” that allows instructors to use anything and as much of it as they want.

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The four factors that need to be considered for fair use are **purpose** (e.g., educational or commercial, temporary or repeated), the **nature of the original** (e.g., biography or fiction), the **amount** (i.e., percentage of the whole or how central the borrowed portion is to the whole), and whether the **market value** of the original would be diminished by the use.

Typically, fair use will not apply when an instructor uses a copyrighted work in its entirety or uses the “heart of the work” (its main points or arguments, or what makes the work distinctive). Such situations are particularly dangerous when use in the course could replace sale of the copyrighted work and when an affordable licensing mechanism is available for using the work or portions of it. Exceptions might be those cases where use is onetime only.

Repeated or long-term use of copyrighted material without permission is very unlikely to be fair use. The argument that the use is spontaneous and in response to current news will not appear credible in the case of material that is used repeatedly across several semesters of course offerings.

When considering whether a planned use of copyrighted material is fair use, consult the copyright checklist in the “Additional Resources” section on the next page. The checklist does not provide a mathematical equation that will indisputably determine whether a use is fair, but it will help you explore the issues. We recommend that you complete the checklist for each of your courses. Moreover, keep a copy of the completed checklist for your records and forward one to your instructional designer. Diligent record-keeping allows you to show that you have made a good-faith effort to engage in fair use.
REQUESTING PERMISSION
If you can’t avoid using copyrighted material, how do you go about getting permission? On the internet, search for either “permission request form” and the medium of your material (music, text, image) or “permission request form” and the publisher/copyright holder of the material. Your instructional designer can assist you with requesting permission.

IMAGES AND AUDIOVISUAL RESOURCES
Whenever possible, link to an image on its source page rather than duplicate the image in a course. If you would like to use stock photography or another audiovisual resource, consult with your instructional designer. They can point you to resources that will meet copyright and fair use guidelines for your purpose.

WHAT STUDENTS SHOULD KNOW (FOR PROJECTS YOU MAY ASK THEM TO DO)
You may want to warn students of fair use issues. While your instructions may vary with a specific assignment, generally speaking, you may want to advise them about fair use just as you would about other issues (e.g., plagiarism) that may arise as they complete papers and projects for the course. Your instructional designer can offer suggestions.

ADDITIONAL RESOURCES
- Copyright Checklist by University of Wisconsin-Extension
- Copyright Law by University of Wisconsin-Madison
- Copyright Basics by University of Wisconsin-Madison
- How to Use Others’ Materials by University of Wisconsin-Madison
- Copyright Information by University of Minnesota
- Copyright Services by University of Minnesota
- Copyright Crash Course by University of Texas
- Copyright & Fair Use by Stanford University