

# Fair Use & Copyright Tools for On-Line Learning



COMMITTEE FOR ON-LINE LEARNING—INFORMATION DOCUMENT

Volume 1, Issue 1

June 2011

## Fair Use & Copyright In General



When Faculty wish to use material that may be protected under copyright law for an online course, here are some steps to help assure that the use will not violate copyright law.

Two basic questions are (1) do I need permission to use this material? and (2) if so, how do I get it?

**Do I need permission?** One does not need permission for a work for use in an online course if it is in the “public domain” or if it’s a legally permitted “fair use.” Let’s explore these one at a time.

**Public domain** includes works created before copyright laws (e.g., the works of Shakespeare), works for which copyright has expired (*Huckleberry Finn*) and many other works defined by law as being in the public domain and usable without any permission. For a public domain checklist, go to the UDC OGC website at:

<http://www.udc.edu/ogc/> and click on “Copyright.”

**Fair use** is not easily defined and there are no precise legal rules. Whether a use is permitted as a fair use depends on all the circumstances. Faculty are strongly encouraged to fully exercise their fair use rights but should do so in consultation with the Office of General Counsel in order to assure UDC representation should a copyright infringement claim arise from an attempted fair use.

The factors considered in fair use are the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work (measured both quantitatively and qualitatively); and the effect of the use upon the potential market or for value of the copyrighted work.

Each time an original work is copied, the copier should perform a reasoned analysis of the action using the four factors enumerated above from the fair use doctrine expressed in the 1976 Copyright Act. If a claim of copyright infringement is made, it

is that reasoned analysis which must be articulated as your defense against the charge of infringement.

A helpful chart in determining fair use is online at: <http://counsel.cua.edu/Copyright/resources/Fairusechart.cfm>.

### How do I get permission?

If a proposed use is determined not to be in the public domain and not to be a fair use, then permission from the copyright holder must be obtained. More information about how to obtain such permission is available from UDC OGC’s website.

Note that there are other more specialized rules that may apply to photocopied sets of materials for students in the classroom (“coursepacks”) or for other classroom use.

Specialized rules apply to use of movies or other audiovisual works in the classroom or elsewhere on campus. Exceptions that may permit a movie to be shown in a face-to-face teaching activity in the classroom do not apply

to using the same movie in an online course. Few movies are in the public domain.

Per one recognized expert,<sup>1</sup> when you buy, rent, or borrow a DVD or videotape of a movie (or any other audiovisual work) made by someone else, you normally obtain only the copy, and not the underlying copyright rights to the movie. You certainly are free to watch the movie yourself, but, beyond that, your rights are quite limited by law. In particular, you do not have the right to show the movie to “the public.” In most cases, doing that requires a separate “public performance” license from the copyright owner.

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<sup>1</sup> Steve McDonald, General Counsel, Rhode Island School of Design.