

## Legal Issues Related to Dissemination of Information in Copyrighted Peer-Reviewed Literature



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## *What is a Copyright?*

A right of intellectual property, whereby authors obtain, for a limited time, certain exclusive rights to their works.



## *Copyright is Exclusively Federal Law*

*Article 1, Section 8, Clause 8 of the Constitution*

Congress has the power to “promote science and the useful arts by securing for limited times to authors...the exclusive right to their ... writings.”



## *The Copyright Act of 1976*

A landmark statute in United States copyright legislation.

It is the primary basis for copyright law in the U.S.

Codified “fair use”.

Went into effect on January 1, 1978.



## *Property Rights*

The copyright law of 1976 makes it clear that all documents are automatically copyrighted as soon as they are written, with the rights belonging to the author (or, if they were written for hire, the author's employer).



## *Scope of Copyright*

A copyrighted work is “any tangible medium of expression, now known or later developed, which can be perceived, reproduced, or otherwise communicated, either with the aid of a machine or device.”



## *Rights Flowing From a Copyright*

- Reproductive Right
- Adaptive Right
- Distribution Right
- Performance Right
- Display Right
- Attribution Right
- Integrity Right



## *Rights Flowing From a Copyright*

Reproductive Right:

The right to reproduce the work in copies



*Rights Flowing From a Copyright*

**Adaptive Right:**

Right to produce derivative works based on the copyright work.



*Rights Flowing From a Copyright*

**Distribution Right:**

Right to distribute copies of the work.



*Rights Flowing From a Copyright*

**Performance Right:**

The right to perform the copyrighted work publicly.



*Rights Flowing From a Copyright*

**Display Right:**

The right to display the copyrighted work publicly.



## *Rights Flowing From a Copyright*

### **Attribution Right:**

The right to claim authorship of the work and to prevent the use of his/her name as the author of a work he/she did not create.



## *Rights Flowing From a Copyright*

### **Integrity Right:**

Right to prevent the use of his/her name as the author of a distorted version of the work, to prevent intentional distortion of the work, and to prevent destruction of the work.



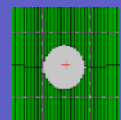
## *Transfer of Copyright*

It is now standard practice for most publishers, particularly those of science, technology, and medical (STM) journals, to require authors to transfer to them the copyrights that the law has vested in creators.



## *Copyright in the Electronic Age*

The internet allows everyone to share an infinite range of works in public, however, such freedom can lead to unintentional abuse of copyrighted material.



## *Copyright in the Electronic Age*

Because it is easy to copy digitally created works and copyrighted works transformed into a digital format and placed on-line or on the internet, it is not necessarily legal to do so without first obtaining the copyright holder's permission.



## *Publication*

Posting someone else's document without express permission violates the author's copyright.

(Copyright Clearance Center (CCC) Academic Permissions Service. Try your library.)



## *Publication*

Posting a document on the Internet, where it is available to everyone, is equivalent to publication of the document.



## *Copyright in the Classroom*

Current copyright law gives legal protection to nearly all text, images, audiovisual recordings, and other course materials that instructors or students might desire to use in the classroom.



## *The Doctrine of Fair Use*

Fair use under section 107 of the Copyright Act of 1976, specifically allows for multiple copying of copyrighted work when done for classroom work under certain conditions.



## *The Doctrine of Fair Use*

Fair use depends on the balancing of four factors:

- 1) Purpose of the work.
- 2) Nature of the work.
- 3) Amount of the work used.
- 4) Effect of the use on the market for the original.



## *The Doctrine of Fair Use*

### 1) Purpose of the Work:

Materials should be used in class only for the purpose of serving the needs of specific educational programs.

Students should not be charged a fee specifically or directly for the materials.



## *The Doctrine of Fair Use*

### 2) Nature of the Work:

Use only those portions of the work relevant to the educational objectives of the classroom.



## *The Doctrine of Fair Use*

### 3) Amount of the work:

Materials used in the classroom will generally be limited to brief works or excerpts from longer works (individual articles).

The amount of the work used should be related directly to the educational objectives of the course.



## *The Doctrine of Fair Use*

### 4) Effect of the Use on the Market for the Original

The instructor should consider whether the photocopying harms the market or sale of copyrighted material.

Instructor should consider whether materials are reasonable available and affordable for students to purchase.



## *Fair Use*

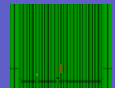
A reasonable interpretation of the law is one (1) article per issue of a journal, and one-tenth or one chapter of a book, whichever is greater.

Use beyond that requires payment of copyright royalty fees to the publisher.



## *Fair Use in Electronic Publishing*

The same copyright protections exist for the author of a work regardless of whether the work is in a database, CD-ROM, bulletin board, or on the Internet.



## *Fair Use in the Electronic Media Environment*

Issues concerning the application of fair use principles to electronic information are not addressed in the Copyright Act of 1976.



## *Fair Use of Web-site Material*

Fair use generally allows students and teachers to copy web-site material for use in their classroom.



## *Technology, Education and Copyright Harmonization (Teach) Act of 2002*

- Amends the Copyright Act of 1976
- Updates copyright law to broaden instructors' legal use of copyrighted materials in online instruction at accredited nonprofit educational institutions.



## *Electronic Copyright Safeguards - Teach Act Guidelines*

- Websites must be password protected.
- Only post copyrighted materials shortly before they will be used.
- Delete material from the site when they are no longer needed by the students.



## Conclusion

The old rules of Copyright protection still apply in the electronic age, but the ability to violate the rules is much, much easier.



## Thank You



UNCLEAR ON THE CONCEPT, WHEN  
MORTERMAN'S CLIENT ASKED HIM  
TO COPYRIGHT THE DOCUMENT, HE  
PERSONALLY OVERSAW MS. KIPPLE  
TO INSURE IT WAS COPIED RIGHT.

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