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Fair Use Guidelines for Educational Multimedia Creators

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Fair Use Guidelines for Educational Multimedia Creators

Wording regarding the "fair use" exemption under the Copyright Act of 1976 is quite vague, making it difficult to determine what constitutes fair use of copyrighted material. This led a group of publishers, writers, and educators to work together and agree on an interpretation for the "fair use" inclusion of copyrighted works in multimedia projects prepared by students and educators.

These guidelines were made part of the Congressional Record and became an unrelated part of a Judiciary Committee Report in September 1996.

This article provides an overview of, and abridged excerpts from, the Fair Use Guidelines for Educational Multimedia, and related introductory material, available online at http://www.libraries.psu.edu/mtss/fairuse/guidelines.html. Excerpted material is provided below in quotation marks.

"Under the Copyright Act of 1976, copyright owners have the exclusive right to reproduce, prepare derivative works, distribute, perform, display, transfer ownership, rent or lend their creations. Under the same Act, the 'fair use' exemption places a limit on these exclusive rights to promote free speech, learning, scholarly research and open discussion. Accordingly, under the Act, educators may use portions of copyrighted material if the purpose and character of the use is educational in nature, previously published, not a substantial part of the entire work and if the marketability of the work is not impaired by the use.

"The Guidelines do not represent a legal document, nor are they legally binding. While only the courts can decide whether a particular use of a copyrighted work falls within the fair use exemption, these guidelines represent the participants' consensus view of what constitutes the fair use of a portion of a work which is included in a multimedia educational project. The specific portion and time limitations will help educators, scholars and students more easily identify whether using a portion of a certain copyrighted work in their multimedia program constitutes a fair use of that work. They grant a relative degree of certainty that a use within the guidelines will not be perceived as an infringement of the Copyright Act by the endorsing copyright owners, and that permission for such use will not be required. The more one exceeds these guidelines, the greater the risk that the use of a work is not a fair use, and that permission must be sought."

Applicability

"These guidelines apply to the use, without permission, of portions of lawfully acquired copyrighted works in educational multimedia projects which are created by educators or students as part of a systematic learning activity by nonprofit educational institutions. Educational multimedia projects created under these guidelines incorporate students' or educators' original material, such as course notes or commentary, together with various copyrighted media formats including ... motion media, music, text material, graphics, illustrations, photographs and digital software, which are combined into an integrated presentation."

Students
These guidelines apply to students "producing their own educational multimedia projects for a specific course." Students may "perform and display ... their projects for educational uses in the course for which they were created. They may also "use them in their own portfolios as examples of their academic work for later personal uses such as job and graduate school interviews."

**Educators**

These guidelines apply to educators "producing their own educational multimedia programs for their own teaching tools, in support of curriculum-based instructional activities at educational institutions."

Educators can use their multimedia projects produced under the fair use guidelines for face-to-face instruction, directed self-study assigned to students, and for remote instruction to students enrolled in curriculum-based courses (subject to certain restrictions regarding access to the materials over a network). Under certain conditions projects may also be "placed on reserve in a learning resource center, library or similar facility for on-site use by students enrolled in the course."

Also, educators may perform/display their multimedia projects at peer workshops and conferences, and may retain educational multimedia projects in their personal portfolios for later personal uses such as tenure review or job interviews.

**Time Limitations**

"Educators may use their educational multimedia projects ... for a period of up to two years after the first instructional use with a class. Use beyond that time period, even for educational purposes, requires permission for each copyrighted portion incorporated in the production."

**Portion Limitations**

Portion limitations refer to the total amount of "material from a single copyrighted work that is permitted to be used in an educational multimedia project without permission.... These limits apply cumulatively to each educator's or student's multimedia project(s) for the same academic semester, cycle or term. All students should be instructed about the reasons for copyright protection and the need to follow these guidelines."

**Portion limits for various media are as follows:**

Motion media -- up to 10% or 3 minutes, whichever is less.

- Text material -- up to 10% or 1000 words, whichever is less (additional rules are provided for poetry).

- Music, lyrics, and music video -- up to 10%, but in no event more than 30 seconds, of the music and lyrics from an individual musical work.

- Illustrations and photographs -- "...fair use usually precludes the use of an entire work (but) under these guidelines a photograph or illustration may be used in its entirety but no more than 5 images by an artist or photographer may be reproduced or otherwise incorporated...."
When using photographs and illustrations from a published collective work, not more than 10% or 15 images, whichever is less."

- Numerical data sets -- up to 10% or 2500 fields or cell entries, whichever is less, from a copyrighted database or data table.

**Other Fair Use Guidelines Information**

The *Fair Use Guidelines for Educational Multimedia* also provides information on:

- Restrictions on copying and distribution of educational multimedia projects
- Examples of when permission is required for use of copyrighted materials
- Attribution, acknowledgment and display of credits and notice of use
- Future uses beyond fair use
- Integrity of copyrighted works: alterations

**Endorsement of Guidelines**

Some of the organizations that have endorsed the *Fair Use Guidelines for Educational Multimedia* include:

- American Society of Composers, Authors and Publishers (ASCAP)
- Association for Educational Communications and Technology (AECT)
- Association of American Colleges and Universities (AAC&U)
- Broadcast Music, Inc. (BMI)
- Consortium of College and University Media Centers (CCUMC)
- Software Publishers Association (SPA)
- U.S. National Endowment for the Arts (NEA)
- U.S. Copyright Office
- U.S. Patent and Trademark Office

**Your Comments are Welcome**
We welcome your comments and suggestions on this and all UFIT documentation. Please send your comments to:

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