

University Libraries

## **General Principles of Fair Use in Education**

In seeking to balance the educational needs and research interests of the University community with the interests of copyright owners, the University Libraries stand firmly behind the statutory concept of fair use provided in the U. S. Copyright Act. (17 U.S.C. Section 107). The Libraries seek to assure that its user communities understand their responsibilities in complying with copyright law. Appropriate application of fair use in education is dependent on a fundamental knowledge of copyright law. Library users can make good faith fair use judgements only when they understand the statute, and where and when it can be appropriately applied.<sup>1</sup>

In order to foster knowledgeable and informed fair use assertion the Libraries adhere to the following general principles for the appropriate application of fair use. These principles illuminate fair use standards within the Libraries and will continue to guide future development of copyright and fair use standards for applying policy within the Libraries.

### **Principles**

Principle 1: *Fair use is both technology and medium neutral.*

The fair use doctrine applies to uses in digital environments and to any copyrighted work without regard to the medium of the original work. It is important to note, however, that fair use will not apply to licensed resources, unless the terms of controlling agreements specifically defer to Section 107 -- statutory fair use.

Principle 2: *Appropriate fair use assertions depend on a case-by-case examination of the facts surrounding each case, and the four factors identified in Section 107 of the U. S. Copyright Act. These factors must be evaluated to determine how they balance in weighing the question, whether or not any particular use is a fair use. The factors to consider are:*

1. The purpose or character of the use; including whether such use is of a commercial nature or for nonprofit educational purposes.
2. The nature of the copyrighted work used.
3. The amount and substantiality of the work being used.
4. The effect of the use on markets for or the value of the original work.

In general uses for educational purposes at nonprofit institutions weigh in favor of fair use. Considering factor number two, fair use favors the use of works of a factual nature more than the use of creative, artistic works. With respect to amount used, using less than an entire work, and not that portion which might be viewed as the essence of the work, will weigh more in favor of fair use. As for market effect, uses that have no impact on the market value for the original work weigh in favor of fair use.

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<sup>1</sup> Contractual agreements concerning access and use of some library resources take precedence over copyright statute and control the extent to which fair use will apply.

Principle 3: *Responsible and good faith judgements concerning fair use are the result of a knowledgeable and informed teaching community.*

University faculty and staff are expected to know and comply with the laws and regulations related to their duties<sup>2</sup>. Faculty and staff who use copyrighted materials are responsible for copyright compliance in their work. The University Libraries, the Office of the General Counsel, the Copyright Permissions Center, and other university units offer ongoing information and training programs that provide copyright awareness and fair use decision support to faculty and staff. The Regents Policy on Legal Defense and Indemnification of Employees [<http://www1.umn.edu/regents/policies.html>] describes the conditions under which the University will defend and indemnify employees. Subject to that policy, the University will defend and indemnify employees who act in good faith and consistent with the policy in the scope of their employment.

Principle 4: *There are varied interests in and varied opinions about fair use.*

Copyright law continues to evolve the general concept of fair use embodied in Section 107. Familiarity with court decisions concerned with fair use is essential in the rapidly changing technology environment. There is no "bright line" rule for determining fair use and opinion among reasonable individuals will vary. Exposure to the variety of scholarly opinions about fair use can lead to a broader overall understanding of fair use.

Principle 5: *Fair use, as defined in the statute, is determined on a case-by-case basis, with a careful four-factor analysis. While guidelines can inform this analysis, fair use is not limited to the safe harbors they outline.*

Attempts to formulate guidelines for fair use in education have not succeeded in generating broad consensus agreement among educators and members of the publishing industry as to what sorts of uses necessarily constitute fair uses. Often guidelines impose restrictions and conditions that are not expressed in Section 107's language. Though not necessarily determinative, as part of the legislative history surrounding the Copyright Act of 1976, the *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals* (H.R. 2223) is informative.

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*These principles were reviewed by the University of Minnesota's Office of the General Counsel and approved by the University Libraries' Leadership Council in February 2004.*

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<sup>2</sup> University of Minnesota Regents Policy, Code of Conduct