


Copyright issues
Ground Rules
Case Scenarios



Ground Rule #1
I am not a lawyer.
I have never even played one on TV.



Ground Rule #2
My brother and many of my cousins
are lawyers, so no lawyer jokes.

Ground Rule #3

This is not a joke: If you ask any 5 copyright lawyers about a particular application of the concept of fair use, you may well get 6 different answers.

Ground Rule #4 No "©" required.

Copyright protection is afforded to any original work of authorship fixed in any tangible medium of expression. *This protection begins at the moment the work is fixed in a tangible medium.*

Ground Rule #5

Copyright holders are given these five exclusive rights: (1) reproduction, (2) adaptation, (3) distribution, (4) public performance, and (5) public display.

Let's get practical:
Can I "use" material for which I don't hold the copyright?

Yes, if...

It's not protected by copyright law because it is a "mere fact."

e.g., a phone number, a street address, a URL

Let's get practical:
Can I "use" material for which I don't hold the copyright?

Yes, if...

It's not protected by copyright law because it is in the public domain.

e.g., works of Shakespeare (old)
NAEP reports (US Gov't publication)
Linx MOJ (placed in PD)

Let's get practical:
Can I "use" material for which I don't hold the copyright?

Yes, if...

The copyright holder has granted you permission.

e.g., *Educational Researcher: "no... permission is necessary... to make photocopies for classroom use"*

Let's get practical:
Can I "use" material for which I don't hold the copyright?

Yes, if...

Even if it's protected by copyright and you don't have permission, *provided* you can assert a fair use defense to a charge of infringement.

Fair use
Factor 1: Purpose and character of the use.

Supporting a fair use argument: not-for-profit educational use

⇕

Undermining a fair use argument: commercial use

Fair use
Factor 2: Nature of the copyrighted work.

Supporting a fair use argument: mostly factual

⇕

Undermining a fair use argument: creative, original

Fair use
Factor 3: Amount and substantiality.
Supporting a fair use argument: small portion; not the heart of the material

⇕

Undermining a fair use argument: large amount, replaces original

Fair use
Factor 4: Potential effect on the market.
Supporting a fair use argument: no market exists; no likely impact on copyright holder's revenue


⇕

Undermining a fair use argument: loss of revenue for copyright holder; consumable

In summary...


Your ability to legally use another person's creative work relies on one of the following:

1. Work is in public domain
2. Permission from the copyright holder
3. You assert a right for fair use




Case Scenario #1

Someone on Earthlink has put together a great list of Internet resources on my subject area and I link to her site. She has sent me e-mail demanding that I remove the link from my web page because I am infringing on her copyright.



Case Scenario #2

There's an article on the web I want to have my students read, but it's on a slow server that's down a lot of the time. I want to copy it to my course web site to improve speed and reliability.



Case Scenario #3

I wrote a paper published in a journal several years ago. I've still got the document in an old word processing format. I want to convert the paper to HTML and put it on my faculty web site.

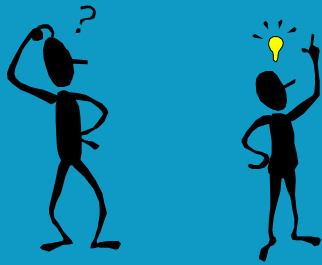
Case Scenario #4


I want to have full text of several journal articles scanned in and put up on my course web site as PDF documents.

Case Scenario #5

As one of my class assignments, students are expected to post to a discussion forum. I want to build on this over subsequent semesters. Eventually, I may compile these into a book for publication.

Your questions and comments





(Supplemental slides follow)



Ground Rule #6

"Fair use" is a limitation on the exclusive rights of a copyright holder subject to specific criteria. A fair use analysis must be done on a case-by-case basis.




Ground Rule #7

Works in the public domain are not afforded copyright protection.




Ground Rule #8

Facts are not afforded copyright protection.




Case Scenario #6

I'm writing a movie critique that will be made available on the web. I want to use a clip from the movie in my multimedia web publication.




Case Scenario #7

I'm on an e-mail list in my subject area and someone posts an interesting argument. I'd like to forward that on to my students.



Case Scenario #8

If I buy a piece of software, I can keep a copy on my computer at work and another one on my computer at home without a problem, since I can physically only use one at a time.



The Infringometer

<http://staffweb.lib.uiowa.edu/psoderdahl/infringometer>

A practical approach