Copyright and Fair Use

What is Copyright?

Article 1, Section 8, Clause 8 of the United States Constitution states that Congress shall have the power to promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

In other words…

Copyright should balance the rights of creators with the progress of society by:

- Allowing creators to reap reasonable rewards for their efforts.
- Allowing sufficient access to creative work so that others can build upon what has already been done.

What can be copyrighted?

All creative works in any medium are copyrighted at the moment of their creation. This includes:

- literary works: fiction, poetry, drama, music, lyrics, dance
- architectural works
- computer programs
- visual works: photographs, graphics, sculptures
- audiovisual works: film, sound effects

Copyright is simultaneous with creation. You do not have to register with the copyright office or ©, although doing so serves as a reminder and may strengthen your case if litigation becomes necessary.

What cannot be copyrighted?

- facts: sports scores, place names, telephone numbers, common scientific and mathematical formulae, historical dates, etc.
- works in the public domain

What is the Public Domain?

Works considered common property of all which cannot be copyrighted. Works in the public domain include:

- Most works created by government agencies.
- Works for which copyright has expired. Generally, if the work was created after 1978, copyright lasts the lifetime of the author plus 70 years. However, some exceptions have recently passed into law, such as the Sonny Bono Copyright Term Extension Act (pdf).
- Click here for more details.

If you violate copyright…

- You might get a cease-and-desist letter.
- You might get sued in civil court.
- You might be charged with a crime if you intentionally circumvent copyright protection technology and make more than ten copies with a value of $2,500.
Copyright and Fair Use

Fair Use

There are some exceptions to the rights of copyright holders that allows for use of copyrighted material without permission of the copyright holder. The most common of these exceptions is called fair use.

The fair use exemption allows for educational use of copyrighted material. In most cases, books, articles, films, and other copyrighted materials used in a class are covered by fair use. This means the instructor does not have to get special permission or pay to use the materials in class although, of course, credit should always be given. This also means any copyrighted material students may use in class presentations or papers is also usually covered by fair use.

The Fair Use Factors

Sometimes it is a matter of interpretation whether the use of a copyrighted work qualifies for the fair use exemption or not. There are four basic guidelines to follow:

1. Use of the work is intended for educational purposes
2. Whether the work is factual or fictional. It is more likely to count as fair use if it is factual.
3. How much of the work is being used.
4. Whether use of the work adversely affects its market value.

More here.

For example

When your professor photocopies and passes out to the class a chapter from a psychology book for you to read, that would be fair use. It is a short section of a long factual work (factors 2 and 3) being used for educational purposes (factor 1) that is not likely to divert sales away from the book (if you really want to read the whole thing, you’d have to buy your own copy. Factor 4).

But if your professor photocopies an entire book and has it bound as a coursepack that you have to buy with none of the money going back to the author or original publisher, the case for fair use is substantially weakened.