

**Fair Use – General Guidelines (Material Below From Three Rivers Community College
Copyright/Fair Use Guidelines)**

[http://www.trcc.commnet.edu/div_it/educationaltechnology/PDF/Three Rivers Copyright Fair Use Guidelines.pdf](http://www.trcc.commnet.edu/div_it/educationaltechnology/PDF/Three_Rivers_Copyright_Fair_Use_Guidelines.pdf)

If copyright law sounds very restrictive, it is meant to be so. It is law which protects rights holders and gives them an incentive to produce and distribute creative works to society. However, if it is so restrictive it seems antithetical to creating the types of classroom environments necessary to accomplish the college's mission, the concept of "fair use" changes the equation. The term "*educational copyright*" has been used but this term has no bearing in copyright law. What is really meant is "*fair use*" policy. The concept of fair use allows faculty members to use copyrighted works in on-campus, web-enhanced, hybrid and online classrooms *without obtaining permission from the publishing company, author, speaker, etc.* Fair use is an exclusion to copyright but it does not negate the rights of the original creator. In order for fair usage to be considered "fair" it must pass a test in four key areas.

The Fair Use Test(the Four Factor Test)

Fair use is based on four key factors (section 107 of the Copyright Act, <http://www.copyright.gov/fls/fl102.html>):

- a. -how the work is used such as nonprofit educational versus commercial,
- b. -the nature of the work,
- c. -how much of the work is used,
- d. -and the effect on the marketing of the original work.

How the Work Is Used

- a. The materials have an educational purpose and are NOT capriciously included.
- b. The students are NOT charged a fee for the materials.

The Nature of the Work

The nature of the work plays an important part in determining if classroom usage is fair. Facts, statistics, and ideas are not copyrightable so faculty usage of them from sources that are protected by copyright may be fair. For example, mentioning that the President visited a European country last week and citing the *National Newspaper* as the source is fair because that information is factual. Another item that arises from this aspect of fair use is that faculty use of nonfiction material is more likely to be fair use than fiction. (However, consumables such as test forms and workbook pages CANNOT be justified and should NOT be copied.)

The Amount

How much work is used is critical in determining if usage is fair. Only the portions of the work relevant to the educational objectives of the course should be used. The amount used should NOT be considered the heart, or key information, of the work. Use the least amount of the work in proportion to the whole that can be used. A few paragraphs from a book would likely be considered fair use; a chapter in a short book or a book with few chapters is more difficult to justify. A 10 second segment of a popular song is likely fair use while the entire 3 minute song is more difficult to justify.

Examples of Accepted Instances of Fair Use

The following are examples of instances in which fair use is accepted. *All four* factors must always be the test. Original sources should always be cited. The attached *Fair Use Checklist* can help with any fair use decision.

- a. The usage in class directly supports an educational objective.
- b. Nonfiction sources are used.
- c. Statistics are used.
- d. The information used is news.
- e. Proportionately small amounts of the whole work are used.
- f. The amount of the work used is only what is necessary to meet the written educational objective.
- g. The work is used for critical analysis in class.
- h. There is insufficient time to obtain permission for the use of the current semester.
- i. The access to the information is restricted to students. (This favors use of the learning management system, Blackboard or other LMS, over open web sites.)
- j. No similar product, book article, etc., is offered by the copyright holder.

"Rules of Thumb"

Additionally, these are some "rules of thumb" for a single semester usage. In general, the faculty member should limit the copies produced to only what is needed for class and the usage should be spontaneous. Under the conditions described below and passing the Four Factor Fair Use Test, the college will support the fair use of copyrighted materials.

- a. *Art, Photographs, Images, Chart, diagram, cartoon* – Can use up to 5 images of a particular author or photographer or 10% of a collected body of work
- b. *Books* – Can use entire book for critical analysis, otherwise use up to 10%
- c. *Film and videos* - Can use up to 3 minutes or 10%, whichever is less
- d. *Music* – Can use entire song, album or composition for critical analysis, otherwise use up to 10% of the work.
- e. *Newspapers, Magazines, Online Articles* –Can use full articles for critical analysis, otherwise use up to 10%
- f. *Poems* – Can use full poem for critical analysis, otherwise 10%