

## The Copyright Act & Fair Use

### The Copyright Act (<http://www.sii.net/piracy/pubs/USCode.pdf>)

(17 U.S.C. § 106) gives the owner of a copyrighted work the exclusive right to reproduce the work, to prepare derivative works, to distribute copies of the work, and to perform or display the work publicly. In most cases, no one can make copies of a copyrighted work without the copyright owner's permission, and anyone who does so is an infringer of the copyright and may be held liable to the full extent of the law.

Section 107 of the Copyright Act – referred to as the “fair use exception” – permits a work to be copied without the permission of the copyright owner under certain limited circumstances. The Copyright Act sets forth four factors that courts are to consider in determining whether copying of someone else's work is permitted by the fair use exception:

1. The purpose and character of the copying, including whether the use is of a commercial nature or is for non-profit educational purposes. For example, copying for nonprofit educational uses may be more likely to qualify as fair use);
2. The nature of the work being copied. Copying from works that are primarily factual in nature (like a science book) is tolerated more than copying from more creative works;
3. The amount and substantiality of the portion that is copied in relation to the copyrighted work as a whole -- the more that is copied or the more significant the portion that is copied, regardless of the quantity, the less likely that fair use will apply and
4. The effect of the copying upon the potential market for or value of the copyrighted work. That is, copying has an adverse impact on the market for the original work. Copying an entire supplemental science software program, rather than buying it, would not be fair use, but piracy.

Determining whether fair use exists depends on particular circumstances. To assist educators in evaluating whether their intended copying of copyrighted works will violate the law, the legislative history of the Copyright Act includes a set of Guidelines, "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions", <http://www.copyright.gov/circs/circ21.pdf>, that help define what constitutes "fair use" for classroom copying. These Guidelines only cover the reproduction of books, periodicals and musical compositions, not software. Except for cases of reverse engineering, copying of software will almost never qualify as a fair use.

In many other cases, it is difficult to know when something is "fair use." The best strategy is to contact the publisher to find out if a license is available for your specific needs. The rule of thumb is to assume that "fair use" does not apply.

The Copyright Act provides other exemptions that may apply to specific educational activities. The US Copyright Office publishes an excellent summary of Section 107 of the Guidelines. The publication is Circular 21 - Reproduction of Copyrighted Works by Educators and Librarians (<http://www.copyright.gov/circs/circ21.pdf>).