**Fair Use**

Defined in *Copyright Law of the United States of America, Title 17, Sec. 107*

Exception allowing use of copyrighted materials

Four-factor analysis is applied to determine if the use is fair

The “Four Factors”:

- **Purpose and character of the use**
  - Nonprofit educational purposes vs. commercial/entertainment
  - Teaching, research, criticism, scholarship, commentary, news reporting

- **Nature of copyrighted work**
  - Factual (not fiction)
  - Published

- **Amount and substantiality of portion used in relation to copyrighted work as a whole**
  - Small amount (not specifically defined)
  - Doesn’t constitute the “heart of the work”

- **Market effect of use**
  - Impact on current or potential market for copyrighted work (including material like workbooks intended to be purchased)
  - Licensing/permissions unavailable
  - Limited access to work
  - Legal copy loaned

Determination of fair use generally occurs during infringement suit; court weighs factors and makes decision

4th factor used to be considered the most important

Recently courts are emphasizing 1st factor, with emphasis on “transformative use” (adding new expression/meaning/insights)

**Georgia State case**

Publishers alleged copyright infringement in e-reserves by widespread and unauthorized copying and distribution of copyrighted works.

Judge found infringement in only a few cases, found that GSU’s policy was good faith interpretation of fair use provision

Reasonable limit defined (e.g., 10% of book with fewer than 10 chapters); access must be limited to students currently enrolled in course; excerpts must fill demonstrated purpose in course curriculum.

**Classroom Use Exemption**

17 U.S.C. §110(1)

IF AND ONLY IF you are:

- in a classroom or similar place devoted to instruction AND
- engaged in face-to-face, in-person teaching activities AND
- at a nonprofit educational institution

You and the students have rights to perform and/or display any works without asking permission:

- Play movies/music at any length
- Perform music, read poems, act out scenes, etc.

**TEACH Act**

17 U.S.C. §110(2)

Exemptions for use of copyrighted materials in distance education (and mostly spelling out restrictions)

- Must be accredited nonprofit educational institutions
- Use must be part of mediated instructional activities
- Use must be limited to students enrolled in specific class
- Use must be for live or asynchronous class sessions
- Transmission of many materials as might be included in regular live classroom session
  - Can transmit performances of entire non-dramatic literary or musical work
  - Can transmit displays of any work in amounts comparable to typical face-to-face displays (including still images)
  - Can transmit only “reasonable and limited portions” of any other performance (audiovisual and dramatic musical works can only be shown as clips)
- Applies only to the use of materials that would ordinarily be displayed in the live classroom

DOES NOT EXTEND TO:

- Electronic reserves, ILL, commercial document delivery – digital delivery of supplemental materials still governed by fair use
- Textbooks or other licensed digital content
- Conversion of materials from analog to digital formats