

# ©COPYRIGHT AND THE ©LASSROOM

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## 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  
4<sup>th</sup> factor used to be considered the most important

Recently courts are emphasizing 1<sup>st</sup> 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

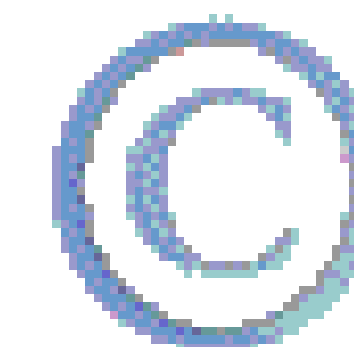
17 U.S.C. §110(1)

**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