

Employee Questions/Comments

1165-Copyright Law & 2150-Use of Copyright Materials

Employee 1 Questions/Comments:

The last line of the third paragraph reads Students Code of Conduct and should say “Student Code of Conduct.” (no ‘s’ on student)

Thanks.

Employee 2 Questions/Comments:

I believe the policy verbiage and flowchart are too vague and not helpful in determining legal educational use of copyright material. Consider something more detailed; see for example the [Duke University TEACH ACT Flow Chart](#)

Verbiage on Fair Use should include link to: [Section 107 of the Copyright Act](#) and the information found in the following excerpt from this link:

Four factors to help determine types of content usage that may be considered fair use. No one factor alone dictates whether a particular use is indeed fair use. Consideration of all four factors is needed to help determine whether or not copyright permission is required.

1. The purpose and character of the use, including whether it is for commercial use or for nonprofit educational purposes.
2. The nature of the copyrighted work.
This factor focuses on the work itself. The legislative history states that there is a definite difference between reproducing a short news note and reproducing a full musical score because of the nature of the work. Moreover, some works, such as standardized tests and workbooks, will never qualify for fair use because by their nature they are meant to be consumed. Uses of factual works such as scientific articles are more likely to fall within fair use.
3. The amount and substantiality of the portion used in relation to the copyright-protected work as a whole.
This factor considers how much of the copyrighted work was used in comparison to the original work as a whole. Generally, the larger the amount used, the less likely a court will find the use to be a fair use. Amount and substantiality is also a qualitative test; that is, even though one takes only a small portion of a work, it still may be too much if what is taken is the "heart of the work."
[Click here](#) for a legal example of "the heart of the work."
4. The effect of the use on the potential market for or value of the copyright-protected work.
Courts use this factor to determine whether the use of a work is likely to result in an economic loss that the copyright holder is otherwise entitled to receive. It looks at whether the nature of the use competes with or diminishes the potential market for the use that the owner is already exploiting or can reasonably be expected soon to exploit.

Even if the immediate loss is not substantial, courts have found that, should the loss become great if the practice were to become widespread, then this factor favors the copyright holder.

While these four factors are helpful guides, they do not clearly identify uses that are or are not fair use. Fair use is not a straightforward concept; therefore, any fair use analysis must be conducted on a case-by-case basis considering all four factors and the circumstances of the situation at hand.

Verbiage on TEACH Act should include a link to [Copyright Basics: Teach Act](#) and the information found in the following excerpt from this link:

Instructors may use a wider range of works in distance learning environments.

Students may participate in distance learning sessions from virtually any location.

All participants enjoy greater latitude when it comes to storing, copying and digitizing materials.

TEACH Requirements

In exchange for unprecedented access to copyright-protected material for distance education, TEACH requires that the academic institution meet specific requirements for copyright compliance and education. For the full list of requirements, refer to the TEACH Act at www.copyright.gov/legislation/archive/.

In order for the use of copyrighted materials in distance education to qualify for the TEACH exemptions, the following criteria must be met:

- The institution must be an accredited, non-profit educational institution.
- The use must be part of mediated instructional activities.
- The use must be limited to a specific number of students enrolled in a specific class.
- The use must either be for 'live' or asynchronous class sessions.
- The use must not include the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses.
- Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used.
- The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials.
- The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut & paste disabling, etc.

What TEACH Does Not Allow

The new exemptions under TEACH specifically do not extend to:

- Electronic reserves, coursepacks (electronic or paper) or interlibrary loan (ILL).
- Commercial document delivery.
- Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
- Conversion of materials from analog to digital formats, except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures.

Employee 3 Questions/Comments:

Here is a link to the information we train faculty on copyright,
<https://www.softchalkcloud.com/lesson/serve/BoStDIHUX1hEIM/html>

I am sharing it with you because the following paragraph is not correct:

“Barton Employees may temporarily copy or digitize legally acquired materials for face-to-face- or online instructions as long as the material is not otherwise available for purchase as an instructional or web design tool.”

The fair use act eliminates the requirement to purchase items. Of course this does not apply to textbooks for example but I think a better way of stating the paragraph would be as follows:

“Barton Employees may utilize legally acquired materials for face-to-face- or online instructions as long as the item is allowed to be used under Fair Use and/or the TEACH Act. Any usage of items not covered or allowed by either Fair Use or the TEACH Act must be purchased and utilized in accordance with the appropriate copyright guidelines.”

Hope that helps.

Employee 4 Questions/Comments:

Does this policy mean that an online instructor cannot download a You Tube video into their ecourse?